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# TEXAS REGISTER

*Volume 33 Number 14*

*April 4, 2008*

*Pages 2753 - 2868*

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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***Texas Register***, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

**POSTMASTER:** Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.state.tx.us](mailto:register@sos.state.tx.us)

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.state.tx.us/>

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

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## Appointments

### Appointments for March 14, 2008

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2009, Scott D. Smith of Cedar Park (replacing Rodolfo Garcia of Marfa whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2009, Patricia S. Bailon of Belton (replacing Roberto Bailon of Belton who is deceased).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2011, Jon E. Sloan of Round Rock (replacing Stephen Pena of Georgetown whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2013, Richard Ball of Mineral Wells (replacing Martha Stovall Martin of Graford whose term expired).

Appointed to the Houston-Galveston Regional Review Committee for a term to expire January 1, 2010, Floyd Glenn Beckendorff of Katy (replacing Louis Canales of Brookshire whose term expired).

Appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee, pursuant to HB 14, 80th Legislative Session, Regular Session, for a term to expire December 4, 2011, Scott C. Sanders of Austin.

Appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee, pursuant to HB 14, 80th Legislative Session, Regular Session, for a term to expire December 4, 2011, Jeanne L. Phillips of Dallas.

Appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee, pursuant to HB 14, 80th Legislative Session, Regular Session, for a term to expire December 4, 2011, S. Malcolm Gillis of Houston.

Appointed as Judge of the 100th Judicial District, for a term until the next General Election and until his successor shall be duly elected and qualified, Stuart Messer of Memphis. Mr. Messer is replacing Judge David McCoy who resigned.

### Appointments for March 21, 2008

Appointed to the Central Colorado River Authority Board of Directors for a term to expire February 1, 2009, Billy Bledsoe of Coleman (replacing Barbara A. Simmons of Santa Anna who resigned).

Appointed to the Central Colorado River Authority Board of Directors for a term to expire February 1, 2009, Willis Hudson of Coleman (replacing William R. Laws of Coleman whose term expired).

Appointed to the Central Colorado River Authority Board of Directors for a term to expire February 1, 2011, Andrew Mark Young of Coleman (replacing Ben Scott of Coleman whose term expired).

Appointed to the Central Colorado River Authority Board of Directors for a term to expire February 1, 2011, Mathew Kemper Gaines of Coleman (replacing Nan Knox Markland of Burkett who resigned).

Appointed to the Central Colorado River Authority Board of Directors for a term to expire February 1, 2011, Bruce N. Pittard of Novice (replacing Ann Miller Hargett of Coleman whose term expired).

Appointed to the Texas Emerging Technology Advisory Committee for a term to expire August 31, 2008, Brett Gilbert of College Station (replacing Elsa Murano of Bryan who resigned).

Designating Karen Rankin of San Antonio as Presiding Officer of the Texas Veterans Commission, effective March 21, 2008, for a term at the pleasure of the Governor. General Rankin is replacing John Brieden of Brenham as presiding officer.

Designating Thomas A. Leeper of Huntsville as Presiding Officer of the Texas State Affordable Housing Corporation Board of Directors for a term at the pleasure of the Governor. Mr. Leeper is replacing Gerardo Romero of El Paso as presiding officer.

Appointed to the Texas State Affordable Housing Corporation Board of Directors for a term to expire February 1, 2011, Raymond Carter Sanders of Austin (replacing Gerardo Romero of El Paso whose term expired).

Designating Alfred Vidaurri, Jr. of Aledo as Presiding Officer of the Texas Board of Architectural Examiners for a term at the pleasure of the Governor. Mr. Vidaurri is replacing Gordon Landreth of Corpus Christi as presiding officer.

### Appointments for March 24, 2008

Appointed to the Office of Rural Community Affairs for a term to expire February 1, 2011, Patrick Wallace of Athens.

Appointed to the Office of Rural Community Affairs for a term to expire February 1, 2013, David Alders of Nacogdoches.

Rick Perry, Governor

TRD-200801583



# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Request for Opinions

### RQ-0686-GA

#### Requestor:

The Honorable Russell W. Malm

Midland County Attorney

200 West Wall Street, Suite 104

Midland, Texas 79701

Re: Whether a county is authorized to pay a performance bonus to elected officials (RQ-0686-GA)

#### Briefs requested by April 21, 2008

### RQ-0687-GA

#### Requestor:

The Honorable Jana A. Jones

Jack and Wise Counties District Attorney

101 North Trinity, Suite 200

Decatur, Texas 76234

Re: Whether the members of a discretionary bail bond board may dissolve the board (RQ-0687-GA)

#### Briefs requested by April 21, 2008

### RQ-0688-GA

#### Requestor:

The Honorable Leo Berman

Chair, Committee on Elections

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether state resources may be used to process state payroll deductions for the purpose of political campaign donations (RQ-0688-GA)

#### Briefs requested by April 21, 2008

### RQ-0689-GA

#### Requestor:

The Honorable James L. Keffer

Chair, Committee on Ways and Means

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a county may grant funds to a school district or charter school (RQ-0689-GA)

#### Briefs requested by April 25, 2008

For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.

TRD-200801579

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: March 25, 2008



## Opinions

### Opinion No. GA-0609

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Whether the Schoolchildren's Religious Liberties Act, subchapter E, chapter 25 of the Education Code, is circumscribed in the Houston Independent School District by a 1970 permanent injunction issued by a federal district court (RQ-0622-GA)

## SUMMARY

The Houston Independent School District is under a permanent injunction issued by a federal district court in December, 1970. Because the matter is thus subject to the continuing jurisdiction of the federal court, this office will not determine whether certain terms of the injunction conflict with or prevail over certain provisions of the Schoolchildren's Religious Liberties Act, subchapter E, chapter 25 of the Texas Education Code.

### Opinion No. GA-0610



The Honorable Richard L. "Rick" Hardcastle  
Chair, Committee on Energy Resources  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a state agency must use an average of 100 Mcf per day of natural gas in order to qualify for the exemption provided by §104.202 of the Utilities Code (RQ-0617-GA)

**S U M M A R Y**

In order to qualify for the exemption in §104.202 of the Utilities Code, a state agency, as statutorily defined, must contract to acquire an annual

average of 100 Mcf per day or more of natural gas to meet its energy requirements.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200801582

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: March 26, 2008

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 5. TEXAS FACILITIES COMMISSION

#### CHAPTER 122. SPACE MANAGEMENT

##### 1 TAC §§122.1 - 122.3

The Texas Facilities Commission (Commission) proposes amendments to §§122.1 - 122.3, concerning Space Management.

During its rule review, published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9735), the Commission has reviewed and considered Texas Administrative Code, Title 1, Part 5, Chapter 122 for readoption, revision, or repeal, in accordance with Texas Government Code §2001.039 (Vernon 2000). The Commission determined that §§122.1 - 122.3, which govern space planning and management within state-owned and state-leased facilities are still necessary, but require further revisions. In a concurrent Agency Rule Review notice, the Commission announces its intent to readopt §§122.1 - 122.3 with amendments. The rule amendments are proposed pursuant to the rule-making authority granted to the Commission in Texas Government Code, §2165.104(c) (Vernon Supp. 2007) and §2165.108 (Vernon 2000).

##### Section by Section Summary

The proposed rule amendments update references to the Commission's agency name and an agency Internet website address, delete definitions that are no longer in use in this chapter, and correct typographical errors, including reformatting. Section 122.1 provides definitions for terms and phrases used in this chapter and in studies and reports conducted in accordance with Texas Government Code, Chapter 2165, Subchapter C. Section 122.2 addresses requests for allocation, relinquishment, or modification of space in facilities under the Commission's control, whether owned or leased by the State of Texas, including submission of such requests and consideration by the Commission. Section 122.3 establishes general space allocation guidelines, provides for state agency requests for waivers from such guidelines, and further establishes an appeal process from Commission determinations on space allocation.

##### Fiscal Note

Edward L. Johnson, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rules as proposed.

##### Public Benefit/Cost Note

Mr. Johnson has also determined that for each year of the first five-year period the proposed amendments are in effect the public benefit will be further clarification by updating the references to the Commission and internet websites, omission of definitions no longer in use, and correction of typographical errors.

Mr. Johnson has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed amendments. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (Vernon Supp. 2007), are not required.

In addition, Mr. Johnson has determined that for each year of the first five-year period the proposed amendments are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon Supp. 2007).

##### Request for Comments

Interested persons may submit written comments on the proposed amendments to General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to [rulescomments@tfc.state.tx.us](mailto:rulescomments@tfc.state.tx.us). For comments submitted electronically, please include "Proposed Facilities Space Planning" in the subject line. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed amendments. Questions concerning the proposed amendments may be directed to Susan Maldonado, Assistant General Counsel, at (512) 463-3960.

##### Statutory Authority

The amendments are proposed under Texas Government Code, Title 10, Subtitle D, §2165.104(c) (Vernon Supp. 2007), and §2165.108 (Vernon 2000), which require the Commission to adopt rules regarding allocation of space in certain state-owned and state-leased facilities.

##### Cross Reference to Statute

The statutory provisions affected by the proposed amendments are those set forth in Chapter 2165, Subchapter C of the Texas Government Code.

##### §122.1. Definitions.

The following words and terms, when used in this chapter and in studies and reports conducted pursuant to Texas Government Code, Chapter 2165, Subchapter C, ~~[and General Space Allocation Guidelines;]~~ shall have the following meanings, unless the context clearly indicates otherwise.

~~[(1) Administrative Support--Administrative support technicians, aides, receptionists.]~~

~~[(2) Agency Director--The highest-ranking executive officer with full-time responsibility for the operations of the agency.]~~

~~[(1) [(3)] Agency Employee--The full-time equivalent (FTE) of a person performing services on site under the direction of a state agency, including hours worked by full-time employees, part-time employees, and consultant and contract individuals as defined by the state auditor[;] including employees paid from funds maintained outside the treasury and hours worked by volunteers performing necessary services. [Requests must include all contract and volunteer employees' work-hours and functions.]~~

~~[(4) Agency Site--A building or building complex on a single site or under a single lease contract, where agency business is transacted or services are provided.]~~

~~[(2) [(5)] Agency Space Allocation--The area assigned to an agency calculated on the basis of Gross Area less the following areas:~~

~~(A) Space designated and regularly used for public activities, including ancillary space such as lobbies, corridors, toilet rooms and refreshment areas associated with the public space. This does not include lobbies and other space ancillary to space primarily intended for internal use by FTEs [FTE's] in the course of interfacing with clients[;] or to accommodate occasional visits by members of the public;~~

~~(B) Vertical shafts or chases used for circulation (elevators or stairs) or mechanical, electrical, telecommunication, or data cabling distributions;~~

~~(C) Mechanical, electrical, telecommunication, and data cabling rooms which house equipment serving more than a single tenant; and~~

~~(D) Other areas which are not relevant to tenant agency functions.~~

~~[(3) [(6)] Circulation Space--Percentage added to open or built-out spaces to provide adequate egress within allocation.~~

~~[(4) [(7)] Commission--The Texas Facilities Commission (TFC) [Building and Procurement Commission].~~

~~[(8) Division Director--The secondary managerial level, deputy directors, department directors who generally report to the agency director.]~~

~~[(5) [(9)] Facilities Service Center [Request Portal]--Central internet site where application for all facilities-related work shall be requested. Services available through the Facilities Service Center [Request Portal] include[;] leased or state owned space assignments, [;] space planning and feasibility studies, [;] real estate market studies, [;] new construction, [;] modifications and alterations of state owned and leased facilities, [;] exclusion requests for modifications to state owned or leased facilities, [;] inspections and surveys,[;] and architectural/engineering services or consultations. The internet address for the Facilities Service Center [Request Portal] is: <http://portal.tfc.state.tx.us/fcsm/facilityfrontpage.asp>. [<http://portal.tbpe.state.tx.us/fcsm/facilityfrontpage.asp>]~~

~~[(10) File Areas--Open or built-out spaces containing active vertical or lateral file cabinets required to be readily accessible for daily agency operations. Closed files should be located in appropriate archival, non-office, facilities.]~~

~~[(6) [(11)] General Space Allocation Guidelines--Guidelines developed [used] by TFC with tenant agencies based on~~

~~analysis of [TBPC in analyzing] agency functional needs, adjacencies and quantities [configuration and quantity] of space. [The internet address for the General Space Allocation Guidelines is <http://www.tbpe.state.tx.us/facplan/index.html>.]~~

~~[(7) [(12)] Gross Area--Gross Floor Areas shall be the area within the inside perimeter of the outside walls of the building with no deduction for hallways, stairs, closets, interior wall thickness, columns, or other features. When floors open to an atrium, the inside finished surface of the walls enclosing the atrium shall be used in lieu of an outer building wall.~~

~~[(13) Office Machine Areas--Centrally located open or built-out spaces for copiers, network printers, faxes, and/or scanners.]~~

~~[(14) Professional/Manager--Attorneys, architects, engineers, doctors, or third level managerial positions with supervisory responsibilities who generally report to the secondary managerial level.]~~

~~[(8) [(15)] Space Allocation Ratio--The mathematical result of dividing the tenant [occupying] agency's Space Allocation by the total number of agency employees per site.~~

~~[(9) [(16)] Space Use Study--A study conducted by the Commission [commission] to determine space requirements for state agencies.~~

~~[(17) Special Areas--Spaces required for agency mission-specific operations, such as clinical showers, evidence rooms, mechanized file systems, public record review areas, video observation rooms, hearing rooms, centralized computer network operation rooms, print shops, centralized supply cabinets, and/or warehouse spaces exceeding 1,000 square feet of non-office space.]~~

~~[(10) [(18)] State Agency--A department, commission, board, office, or [of] other agency in the executive branch of state government created by the state constitution or a state statute; the supreme court, the court of criminal appeals, a court of appeals, the Texas Judicial Council; and a university system or an institution of higher education as defined by §61.003, Education Code, except a public junior college.~~

~~[(19) Technician/Program Administrator--Staff positions with technical, analytical or program administrative duties which may include fourth level managerial duties.]~~

~~[(11) [(20)] Usable Office Space--That area of space as defined in paragraph (2) [(5)] of this section, computed by measuring from the finished surface of the office side of a corridor and/or permanent wall, to the center of partitions that separate interior spaces from adjoining Usable Areas, and the inside finished surface of the dominant portion of the permanent outer building walls.~~

~~[(12) [(21)] Waiver--The Commission's [TBPC's] decision to allow more square feet for an Agency Space Allocation than the tenant agency's General Space Allocation Guidelines provide.~~

*§122.2. Requests for Allocation, Relinquishment, or Modification of Space in Facilities under the Commission's Control.*

(a) Requests for allocation, relinquishment, or modification of space in facilities under the Commission's control shall be submitted via the TFC [TBPC] Facilities Service Center [Request Portal] by an authorized agency representative. The internet address for the Facilities Service Center [Request Portal] is: <http://portal.tfc.state.tx.us/fcsm/facilityfrontpage.asp>. [<http://portal.tbpe.state.tx.us/fcsm/facilityfrontpage.asp>] Requests shall include the following information:

(1) Statement of justification including ~~any increases in [increased]~~ number of FTEs and the name of the agency unit; inadequacy of current facilities; lease expiration; and other reasons relevant to the request for facility space changes;

(2) Certification that funds are authorized and available to accomplish the requested action;

(3) Identification of action requested including whether the request adds, relinquishes, or modified state-owned space; and other reasons relevant to the request;

(4) Desired location including: location of current facility; location of requested facility; or special needs relevant to the request;

(5) Term of need to include: short-term (48 months or less) or long-term (specify duration); date occupancy or action is needed; and any other critical schedule factors;

(6) Present occupancy status of subject agency program describing whether the unit is now housed in state-owned or state-leased property (name and address of facility)~~[- state-leased,]~~ or not housed; present lease number; number of current FTEs and agency's current square footage; requests must include all contract and volunteer employees' work hours and functions;

(7) Special conditions related to critical agency functions that require facility services beyond regular business hours, or other relevant factors; and

(8) Requesting agency contact and telephone and fax numbers for agency program requiring space or modification.

(b) The requesting agency shall work with TFC [TBPC] to establish General Space Allocation Guidelines ~~[space allocation standards]~~ for the agency's particular tasks and functions.

(c) TFC [The TBPC] will grant or deny a request in writing. TFC's [TBPC's] decision on the request is final.

#### §122.3. Space Allocation.

(a) General. The Commission [TBPC] is required to allocate space to state agencies based on best space planning practices for specific functional needs in the best and most efficient manner possible.

(b) Applicability. Sections 122.1 - 122.3 of this chapter [title] apply to TFC's [TBPC's] actions under Texas Government Code, Chapter 2165, Subchapter C and property subject to that subchapter, as outlined in Texas Government Code, §2167.001. [and to office space, warehouse space, laboratory space, storage space exceeding 1,000 gross square feet, boat storage space, certain aircraft hangar space, vehicle parking space, and a combination of those types of space.] These rules apply whether the facility is state-owned or leased.

~~[(c) Exemptions. This section does not apply to:]~~

~~[(1) residential space for Texas Health and Human Services Commission or the Texas Youth Commission;]~~

~~[(2) space utilized for less than one month for meetings, conferences, seminars, conventions, displays, examinations, auctions, or similar purposes;]~~

~~[(3) a site where it is not practical to apply this section because there are too few employees or because of the need for a particular type or use of the space;]~~

~~[(4) radio antenna space;]~~

~~[(5) district office space for members of the legislature;]~~

~~[(6) residential property acquired by the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation; or]~~

~~[(7) classroom and instructional space except as provided by Government Code §2167.007.]~~

(c) ~~[(d)]~~ General Space Allocation Guidelines. Each request for allocation, relinquishment or modification of agency space will be evaluated in a Space Use Study to determine specific functional [functionally specific] requirements. The Space Use Study will be based on space allocation determined by space planning criteria and design standards. Such criteria and standards shall relate directly to tasks for which space is being allocated and shall be updated regularly to reflect changes in best management practices, office equipment, personnel policies and for consistency with private sector standards and industry best practices. TFC [The TBPC] may allocate usable office space in amounts greater than that provided by the General Space Allocation Guidelines when:

(1) particular agency tasks require a specific design response not otherwise categorized;

(2) application of the General Space Allocation Guidelines to a given site is not practical; or

(3) the best financial interest of the state allows for greater space.

(d) ~~[(e)]~~ Waivers of General Space Allocation Guidelines. Waivers may be granted where the tenant agency is willing to accept different quality space at less cost in exchange for a greater amount of space; or the tenant agency will accept space in a different location at a lower cost in exchange for a greater amount of space; or there is less market flexibility in the market, as in rural areas. Waivers may also be granted because of the particular needs of the agency programs.

(e) ~~[(f)]~~ Request for Waiver. An agency request for a waiver from General Space Allocation Guidelines must be submitted, in writing, and must:

(1) describe the reason that the General Space Allocation Guidelines are not practical for the particular needs of the agency at the particular location; and

(2) discuss the financial impact of the requested waiver.

(f) ~~[(g)]~~ Appeal of TFC [TBPC] Space Allocation Determination. A state agency may appeal TFC's [TBPC's] space allocation determination by a written request for review from the Executive Director, or equivalent position, of the state agency to the Executive Director of the TFC [TBPC]. The request must be received at TFC [TBPC] within 14 days of the state agency's receipt of TFC's [TBPC's] space allocation decision. If the state agency is not satisfied with the decision of the TFC's [TBPC's] Executive Director, then the state agency may, within 14 days of the decision, request a review by the Commission at a scheduled public meeting of the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2008.

TRD-200801525

Kay Molina

General Counsel

Texas Facilities Commission

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 463-4257

## PART 8. TEXAS JUDICIAL COUNCIL

### CHAPTER 177. JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY

#### 1 TAC §177.1, §177.2

The Judicial Committee on Information Technology (JCIT) proposes to adopt new §177.1 and §177.2, regarding standards for electronic data interchanges. The new rules require data interchanges to comply with the National Information Exchange Model (NIEM) and specify a series of data exchanges that have been developed in a collaborative fashion pursuant to a project known as the "Texas Path to NIEM."

NIEM is a reference model that is the result of a partnership of the U.S. Department of Justice and the U.S. Department of Homeland Security. NIEM was designed to be used as a consistent baseline for creating exchange documents and transactions across government. The goal of NIEM conformance is for the sender and receiver of information to share a common, unambiguous understanding of the meaning of that information. NIEM leverages and extends the data exchange standards implemented by the Department of Justice Global Justice Information Sharing Initiative (the Global Justice XML Data Model) to facilitate timely, secure information sharing across the whole of the justice, public safety, and homeland security communities.

The primary partners in the Texas Path to NIEM project were the Department of Public Safety, the Department of Criminal Justice, and the Office of Court Administration. The Texas Path to NIEM project developed a strategic plan for implementing NIEM in Texas, and it used the NIEM reference model to identify and develop Information Exchange Package Documents (IEPDs) for Texas. The proposed rules require that certain data exchanges comply with the IEPDs developed by the Texas Path to NIEM.

Glenna Bowman, chief financial officer of the Office of Court Administration (OCA), which provides staff support for JCIT, has determined that for each year of the first five-year period the new sections are in effect, there will be fiscal implications for the state as a result of enforcing or administering the rule as proposed. It is anticipated that the Texas Department of Criminal Justice, the Texas Department of Public Safety, the Office of Attorney General, and the Department of Family and Protective Services will adopt these standards by reference, requiring those agencies to implement the standards within at least some of their information technology systems, and that the Office of the Governor and the Department of Information Resources may adopt these standards as a requirement for purposes of justice system grant eligibility, and justice system case management contracts, respectively. Fiscal implications for local governments as a result of compliance with the sections will depend on the existence and terms of any contract with an information technology system vendor.

Bruce Hermes, director of information services with OCA, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be the capability for justice agencies and courts to achieve integrated justice; i.e., the use of technology to allow the seamless sharing of information at critical decision points throughout the justice system. Texas can improve quality, accuracy, and timeliness of data by creating intermediary standards-based information exchange models. These models will

establish rules and structure for data elements that are to be exchanged between different justice and non-justice entities. This goal is vital to enhancing the intrinsic value of the data as it is delivered to the justice, public safety, and homeland security practitioners in the execution of their critical duties.

There will be no cost to small business or individuals, except that private process servers will be required to comply.

Comments on the proposal may be submitted to Bruce Hermes at P.O. Box 12066, Austin, Texas 78711-2066 or electronically to [niemrulecomments@courts.state.tx.us](mailto:niemrulecomments@courts.state.tx.us). The agency will accept comments through May 5, 2008.

The new rules are proposed under §77.031(2), Texas Government Code, which authorizes the JCIT to develop minimum standards for electronic data interchange and data dictionaries. The proposed rules are expected to support compliance with Chapter 60, Texas Code of Criminal Procedure (Criminal History Record System), §614.017, Texas Health and Safety Code (Exchange of Information [in support of continuity of care for certain offenders]), and the Automated Registry required by OCA Rider 15, General Appropriations Act, 80th Texas Legislature.

No other statutes, articles, or codes are affected by these sections.

#### §177.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Court--Any judge who hears criminal cases or child support cases, and the office of the clerk that supports any such judge.

(2) Information Exchange Package (IEP)--A collection of the information that is commonly or universally exchanged between participating domains. The IEP represents a set of data that is actually transmitted between entities for a specific business purpose.

(3) Information Exchange Package Document (IEPD)--A set of data documentation that completely defines the structure and content of a specific information exchange.

(4) Justice agency--The Texas Department of Criminal Justice (TDCJ), the Department of Public Safety (DPS), the Texas Youth Commission (TYC), the Texas Juvenile Probation Commission (TJPC), the Office of Attorney General Child Support Division (OAG), the Office of Court Administration (OCA), the Department of Family and Protective Services (DFPS), any sheriff or local law enforcement agency that employs a peace officer as defined in art. 2.12, Code of Criminal Procedure, any community supervision and corrections department, any public defender office, any constable, any office of a county or district attorney or criminal district attorney, any private process server, and any agency that receives delinquent child support notifications from the Office of Attorney General Child Support Division or from a court.

(5) NIEM--The National Information Exchange Model, a reference model that is the result of a collaborative effort between the U.S. Department of Justice (DOJ) and the U.S. Department of Homeland Security (DHS) that extends the data exchange standards implemented by the DOJ Global Justice Information Sharing Initiative (the Global Justice XML Data Model). Further information is available at [www.niem.gov](http://www.niem.gov).

(6) Texas Path to NIEM--The local and state justice agency collaborative work project for implementing NIEM in Texas.

(7) XML--Extensible markup language.

#### §177.2. NIEM Compliance.

As justice agencies implement, upgrade, or create new information systems on or after September 1, 2009, justice information data exchanges among courts and justice agencies, among justice agencies, and among courts, shall be compliant with the IEPDs developed by Texas Path to NIEM.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2008.

TRD-200801527

Margaret Bennett

General Counsel for Office of Court Administration

Texas Judicial Council

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 463-6321



## PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

### CHAPTER 252. ADMINISTRATION

#### 1 TAC §§252.1, 252.2, 252.4, 252.6

The Commission on State Emergency Communications (CSEC) proposes amendments to §§252.1, 252.2, 252.4, and 252.6 concerning the administration of the exemption from 9-1-1 fees and surcharges, purchases of goods and services, costs for public information requests, and the distribution of wireless service fees, respectively.

Government Code §2001.039 requires each state agency to review and consider for re-adoption each of its rules not later than the fourth anniversary on which the rule takes effect and every four years thereafter. In the December 14, 2007, issue of the *Texas Register* (32 TexReg 9359), CSEC published notice of its intent to review Chapter 252 rules. CSEC has determined that sufficient reason exists to readopt with amendments §§252.1, 252.2, 252.4, and 252.6.

#### SECTION-BY-SECTION EXPLANATION

Amendments to §252.1 serve to clarify the association with Health and Safety Code §771.074 regarding the exemption from 9-1-1 fees or surcharges for state and federal governments.

Amendments to §252.2 remove specific language governing CSEC's purchases of goods and services and adopts by reference the Comptroller of Public Accounts' rules relating to the Historically Underutilized Business Program.

Amendments to §252.4 remove specific language governing the charges for fulfilling public information requests and adopts by reference the Attorney General's rules regarding public information charges.

Amendments to §252.6 serve to align CSEC's determination of wireless service fee distribution percentages with decennial census as required by Government Code §311.005(3) and Health and Safety Code §1.002. Currently, the rule uses the state demographer's annual population estimates in calculating the distribution percentages. CSEC proposes an effective date for §252.6 of September 1, 2008 so as not to affect Fiscal Year 2008 wireless fee distributions. The amendments also allow

CSEC, upon request of an affected entity, to address boundary issues and changes not reflected in the decennial census.

#### FISCAL NOTE

Paul Mallett, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that the proposed amended sections are in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections.

Mr. Mallett and CSEC Staff have estimated that for each of the first five FYs that amended §252.6 is in effect the estimated loss or increase in revenue to the state or local governments is as follows:

FY 2009 - State (\$89,000); Local +\$89,000

FY 2010 - State (\$98,000); Local +\$98,000

FY 2011 - State (\$108,000); Local +\$108,000

FY 2012 - State (\$118,000); Local +\$118,000

FY 2013 - State (\$130,000); Local +\$130,000

The foregoing estimates reflect the difference in population percentages between the 2000 decennial census and the state demographer's current population estimates. As compared to the state demographer's estimates, the decennial census figures reflect that an increase in the percentage of the population that resides in areas in which 9-1-1 service is provided by a local emergency communication district (as defined in Health and Safety Code §771.001(3)). Based on wireless service fee collections for FY 2007 of approximately \$90 million, the revenue difference represents less than one-tenth of one percent of total collections. The estimates also include an estimated 10% growth rate in total wireless service fee collections. The distribution percentages for each regional planning commission and emergency communication district can be found on CSEC's website under "What's New at CSEC" (<http://www.911.state.tx.us/browse.php/defaulthome>).

#### PUBLIC BENEFIT

Mr. Mallett has determined that for each year of the first five years the amended sections are in effect, the public benefits will be to clarify the applicability of the state government exception from 9-1-1 fees and surcharges; to eliminate the need to revise CSEC rules when a controlling agency's rules are amended; and to provide for the distribution of wireless service fees in accordance with decennial population figures. Mr. Mallet estimates no additional economic costs to persons required to comply with the rules.

#### REGULATORY ANALYSIS

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Mallett has determined that there will be no effect on small businesses or micro-businesses, as those terms are defined in Government Code §2003.001, required to comply with this proposal.

#### PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or by email to patrick.tyler@csec.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATEMENT OF AUTHORITY

The amendments are proposed pursuant to the Health and Safety Code §§1.002, 771.051, 771.074, 771.0711(c), 771.078(b) (2); Government Code §311.005(3).

No other statute, article, or code is affected by the proposal.

*§252.1. Definition of State Agency for Billing Purpose of the 9-1-1 Service Fees and Surcharges.*

The reference to state government in Health and Safety Code §771.074 refers to a state agency. State agency means:

(1) - (2) (No change.)

*§252.2. Purchase of Goods and Services.*

(a) The purpose of this subchapter is to establish the authority and responsibility to promote full and equal business opportunities for all businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. It is the policy of the State of Texas and the Commission [on State Emergency Communications (CSEC)] to encourage the use of historically underutilized businesses [HUBs] and to implement this policy through race, ethnic, and gender-neutral means.

[(b) This subchapter applies to all contracts and purchase orders established under authority delegated to the CSEC by the Texas Building and Procurement Commission (TBPC), Title 10, Government Code, section 2151. It also applies to all bids, proposals, offers, or other applicable expressions of interest over \$100,000 as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, §§111.14 and Texas Administrative Code Chapter 2161 Subchapter F relating to HUB subcontracting responsibilities.]

[(c) In this subchapter, the following definitions apply:]

[(1) Economically Disadvantaged Person—A person who is economically disadvantaged because of the person's identification as a member of a certain group, as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, §§111.12, and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.]

[(2) Good Faith Effort (GFE)—Evidence of certain criteria used by prime contractors to promote inclusion of HUBs in contracts over \$100,000 or more as defined in TAC §§111.13 and §111.14. When applied to agency GFE, the state auditor shall consider whether the agency; has adopted rules under §2161.003, Government Code; has used the Texas Building and Procurement Commission (TBPC) directory and other resources to identify HUBs that are able to contract with the agency; made good faith, timely efforts to contact identified HUBs regarding contracting opportunities; and conducted its procurement program in accordance with the good faith methodology set out in TBPC rules.]

[(3) Historically Underutilized Business (HUB)—A business entity that is a corporation, sole proprietorship, partnership, joint venture, etc. owned or operated by an economically disadvantaged person or persons as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, Rule 111.12 with its principal place of business in Texas.]

[(4) HUB Subcontracting Plan (HSP)—A plan required to be submitted with bids, proposals, offers, or other applicable expressions of interest that determine or describe HUB subcontracting opportunities probable under the contract as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, §§111.13 and §111.14.]

(b) [(d)] In accordance with Government Code §2161.003, the Commission [CSEC] adopts by reference the rules of the Comptroller of Public Accounts in 34 Texas Administrative Code §§20.11, 20.12, 20.13, and 20.14, relating to the Historically Underutilized Business Program. [Texas Building and Procurement Commission at Title 1, Part 5, Chapter 111, Subchapter B, §§111.11 through 111.28, Texas Administrative Code (relating to the HUB Program), which rules were promulgated by the General Services Commission pursuant to Government Code, §2161.002.]

*§252.4. Charges for Open Records Requests.*

In accordance with Government Code §552.262, the Commission adopts by reference the rules of the Office of the Attorney General in 1 Texas Administrative Code §§70.1 - 70.12, relating to the Cost of Copies of Public Information.

[(a) The fees for copies of the records of the Commission on State Emergency Communications (Commission) which are subject to public examination pursuant to the Texas Open Records Act shall be as follows:]

[(1) \$.10 per page for readily available information for less than 50 pages of standard-size paper up to 8 1/2 inches by 14 inches; Each side that has a printed image is considered a page.]

[(2) an additional \$15 per hour personnel charge for processing a request for readily available information of 50 pages or more which takes a minimum of one hour;]

[(3) \$.10 per page, plus \$15 per hour personnel charge, plus 20% of total personnel charges for overhead charge for any quantity of information that requires over one hour to process and is not readily available;]

[(4) actual postage and shipping charges are added to all requests;]

[(5) nonstandard-size copies would consist of a diskette at \$1.00 each; an audio cassette at \$1.00 each; a VHS video cassette at \$2.50 each; and paper larger than 8-1/2 inches by 14 inches at \$.50 per page;]

[(6) any additional reasonable cost will be added at actual cost, with full disclosure to the requesting party as soon as it is known; and]

[(7) a reasonable deposit may be required for requests where the total charges are over \$100.]

[(8) provide a requestor with an itemized statement of estimated charges if charges for copies of public information will exceed \$40, or if a charge will exceed \$40 for making public information available for inspection.]

[(9) if after starting the work, but before making the copies available, it is determined that the initial estimated statement will be exceeded by 20% or more, an updated statement must be sent to the requestor. If the requestor does not respond to the updated statement, the request is considered to have been withdrawn by the requestor.]

[(b) All requests will be treated equally. The Director may waive charges at his/her discretion.]

[(c) If a request is made to inspect records instead of receiving copies, access will be by appointment only during regular business

hours of the Commission office and will be at the discretion of the Director.]

[(d) Confidential or proprietary documents whose distribution is limited by law will not be made available for examination or copying except under court order or other directive.]

[(e) All open records requests must be submitted in writing to the Commission office.]

[(f) Definitions: The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Full cost--The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost should be determined in accordance with generally accepted methodologies.]

[(2) Nonstandard-size copy--A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, VHS video cassette, and nonstandard-size paper copies are examples of nonstandard-size copies.]

[(3) Readily available information--Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information.]

[(4) Standard-size copy--A printed impression on one side of a piece of paper that measures up to 8-1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.]

#### *§252.6. Wireless Service Fee Proportional Distribution.*

(a) In accordance with Government Code §311.005(3), the [The Commission on State Emergency Communications (Commission)] shall use the most recent federal decennial census [most recent annual estimate from the Texas State Data Center] to proportionately distribute [the] wireless emergency service fees [fee] per Health and Safety Code §71.0711(c) and §771.078(b)(2).

(b) Within 90 days of the publication of the most recent decennial census, the [The] Commission shall provide the regional planning commissions (RPCs) and those emergency communication districts (ECDs) not participating in a regional plan with the proposed distribution percentages. RPCs and ECDs may provide comments to the proposed distribution percentages within the timeframe set by the Commission. [approve the specific proportional distributions for a given fiscal year at an open meeting within 90 days of the start of the state fiscal year.]

(c) The Commission shall adopt the distribution percentages in an open meeting. [At least two weeks before that open meeting, Commission staff shall submit for publication in the Texas Register and provide to each jurisdiction projected to receive wireless service fees the proposed proportional distributions for that particular state fiscal year.] The approved [proportional] distribution percentages [listing ] shall be provided to the RPCs and ECDs [jurisdictions that will be receiving the distributions] within thirty (30) days of adoption by the Commission.

(d) Upon request by an RPC or ECD, the Commission shall review, and modify as necessary, the distribution percentages in order to account for changes in boundaries not evidenced in the most recent decennial census.

(e) The Commission shall notify each ECD when [recipient of a wireless service fee proportional distribution each time] a distribution is made. The Commission shall distribute [any] interest earned on [the] wireless emergency service fees and credited by the Comptroller of Public Accounts no less than once each fiscal year [annually].

(f) The effective date of this rule shall be September 1, 2008.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2008.

TRD-200801550

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 305-6930



### **1 TAC §252.5**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Commission on State Emergency Communications or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Commission on State Emergency Communications (CSEC) proposes the repeal of §252.5 concerning local adoption of a state provision or CSEC rule.

Government Code §2001.039 requires each state agency to review and consider for re-adoption each of its rules not later than the fourth anniversary on which the rule takes effect and every four years thereafter. In the December 14, 2007, issue of the *Texas Register* (32 TexReg 9359), CSEC published notice of its intent to review its Chapter 252 rules. CSEC has determined that sufficient reason exists to repeal §252.5.

Repeal of §252.5 is to eliminate the requirement that an emergency communication district must notify CSEC in writing of its voluntary adoption of any section of Health and Safety Code Chapter 771 or a CSEC rule. Health and Safety Code §771.062 authorizes an emergency communication district to adopt a provision of Chapter 771 or a CSEC rule, the section neither requires notification nor specifically authorizes CSEC to impose a notification requirement.

Paul Mallett, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) the proposed amendment is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended sections.

Mr. Mallett has determined that for each year of the first five years the proposed amendment is in effect the public benefit will be to eliminate the administrative burden on local governments in complying with the repealed rule. Mr. Mallet estimates no economic costs to persons required to comply with the rules.

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. CSEC has determined that this proposal does not directly affect a local economy.



Mr. Mallett has determined that there will be no effect on small businesses or micro-businesses, as those terms are defined in Government Code §2003.001, required to comply with this proposal.

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or by email to patrick.tyler@csec.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed pursuant to Health and Safety Code §771.051 and §771.062.

No other statute, article, or code is affected by the proposal.

§252.5. *Local Adoption of State Provision or Rule.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2008.

TRD-200801551

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 305-6930



## **TITLE 22. EXAMINING BOARDS**

### **PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

#### **CHAPTER 1. ARCHITECTS**

#### **SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION**

##### **22 TAC §1.21**

The Texas Board of Architectural Examiners proposes an amendment to §1.21, pertaining to registration by examination. The proposal would allow a candidate for registration to seek registration based upon education obtained from an architectural program if the program becomes accredited within 3 years after the candidate graduates from the program. Currently, education is considered for registration only if the program from which the candidate graduated obtained accreditation within 2 years after the candidate graduated. The intent of the "look back" provision is to allow for the registration of candidates who were students when the program where they were enrolled was undergoing evaluation for accreditation. If the program became accredited based upon conditions and performance at the time the candidate attended the program, the candidate is likely to have received as good an education as he/she would have after accreditation. The Board is proposing extending the "look back" provision of the education component of its registration requirements because the accreditation review and approval process frequently takes longer than 2 years.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications

to state or local government as a result of enforcing or administering the section.

Ms. Hendricks, has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: candidates for licensure who attended the third class to graduate from an architectural program will have the opportunity to become registered based upon the education received at the program previous to accreditation. The rule will assist new programs to attract students who may otherwise avoid a program that is undergoing accreditation review but is not yet accredited. The public will benefit from a larger class of individuals who may become registered to offer architectural services. The rule amendment will have no adverse impact on small or micro business. Therefore there is no need to consider less costly alternatives to the amendment. There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this rule is proposed pursuant to §1051.202 and §1051.705, Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and discretion to approve the colleges or universities of architecture that provide acceptable education for registration as an architect.

The proposed amendment to this rule does not affect any other statutes.

§1.21. *Registration by Examination.*

(a) In order to obtain architectural registration by examination in Texas, an Applicant:

(1) shall have a professional degree from:

(A) an architectural education program accredited by the National Architectural Accreditation Board (NAAB), ~~or from~~

(B) an architectural education program that became accredited by NAAB not later than two years after the Applicant's graduation, ~~or from~~

(C) an architectural education program that was granted candidacy status by NAAB and became accredited by NAAB not later than three years after the Applicant's graduation, or

(D) an architectural education program outside the United States where an evaluation by NAAB or another organization acceptable to the Board has concluded that the program is substantially equivalent to an NAAB accredited professional program;

(2) shall successfully demonstrate completion of the Texas Board of Architectural Examiners Intern Development Training Requirement; and

(3) shall successfully complete the architectural registration examination as more fully described in Subchapter C.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2008.

TRD-200801553

Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners  
Earliest possible date of adoption: May 4, 2008  
For further information, please call: (512) 305-8544



## CHAPTER 3. LANDSCAPE ARCHITECTS

### SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

#### 22 TAC §3.21

The Texas Board of Architectural Examiners proposes an amendment to §3.21, pertaining to registration by examination. The proposal would allow a candidate for registration to seek registration based upon education obtained from a landscape architectural program if the program becomes accredited within 3 years after the candidate graduates from the program. Currently education is considered for registration only if the program from which the candidate graduated obtained accreditation within 2 years after the candidate graduated. The intent of the "look back" provision is to allow for the registration of candidates who were students when the program where they were enrolled was undergoing evaluation for accreditation. If the program became accredited based upon conditions and performance at the time the candidate attended the program, the candidate is likely to have received as good an education as he/she would have after accreditation. The Board is proposing extending the "look back" provision of the education component of its registration requirements because the accreditation review and approval process frequently takes longer than 2 years.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the section.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: candidates for licensure who attended the third class to graduate from a landscape architectural program will have the opportunity to become registered based upon the education received at the program previous to accreditation. The rule will assist new programs to attract students who may otherwise avoid a program that is undergoing accreditation review but is not yet accredited. The public will benefit from a larger class of individuals who may become registered to offer landscape architecture. The board has determined that the rule amendment will have no adverse impact on small or micro business. Therefore there is no need to consider less costly alternatives to the amendment. There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this rule is proposed pursuant to §1051.202 and §1052.154(a)(1), Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and authority to recognize and approve landscape architectural programs which render education acceptable for registration as a landscape architect.

The proposed amendment to this rule does not affect any other statutes.

#### §3.21. *Registration by Examination.*

(a) In order to obtain landscape architectural registration by examination in Texas, an Applicant:

(1) shall have a professional degree from:

(A) a landscape architectural education program accredited by the Landscape Architectural Accreditation Board (LAAB), ~~[or from]~~

(B) a landscape architectural education program that became accredited by LAAB not later than two years after the Applicant's graduation, ~~[or from]~~

(C) a landscape architectural education program that was granted candidacy status by LAAB and became accredited by LAAB not later than three years after the Applicant's graduation, or

(D) a landscape architectural education program outside the United States where an evaluation by NAAB ~~[Education Credential Evaluators]~~ or another organization acceptable to the Board has concluded that the program is substantially equivalent to an LAAB accredited professional program;

(2) (No change.)

(3) shall successfully complete the landscape architectural registration examination as more fully described in Subchapter C of this chapter.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2008.

TRD-200801554

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 305-8544



## CHAPTER 5. INTERIOR DESIGNERS

### SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

#### 22 TAC §5.31

The Texas Board of Architectural Examiners proposes an amendment to §5.31, pertaining to registration by examination. The proposal would allow a candidate for registration to seek registration based upon education obtained from an interior design program if the program becomes accredited within 3 years after the candidate graduates from the program. Currently education is considered for registration only if the program from which the candidate graduated obtained accreditation within 2 years after the candidate graduated. The intent of the "look back" provision is to allow for the registration of candidates who were students when the program where they were enrolled was undergoing evaluation for accreditation. If the program became accredited based upon conditions and performance at the time the candidate attended the program, the candidate is likely to

have received as good an education as he/she would have after accreditation. The Board is proposing extending the "look back" provision of the education component of its registration requirements because the accreditation review and approval process frequently takes longer than 2 years. The proposal also changes the term "Foundation for Interior Design Education Research (FIDER)" to "Council for Interior Design Accreditation (CIDA)." The Foundation changed its name to the Council and the proposed amendment reflects that change.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the section.

Ms. Hendricks, has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: candidates for licensure who attended the third class to graduate from an interior design program will have the opportunity to become registered based upon the education received at the program previous to accreditation. The rule will assist new programs to attract students who may otherwise avoid a program that is not yet accredited. The public will benefit from a larger class of individuals who may become registered to offer interior design. The board has determined that the rule amendment will have no adverse impact on small or micro business. Therefore there is no need to consider less costly alternatives to the amendment. There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this rule is proposed pursuant to §1051.202 and §1053.155(c)(1), Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and discretion to recognize and approve interior design educational programs acceptable to gain admission to take the registration examination.

The proposed amendment to this rule does not affect any other statutes.

#### *§5.31. Registration by Examination.*

(a) In order to obtain interior design registration by examination in Texas, an Applicant shall demonstrate that the Applicant has a combined total of at least six years of approved interior design education and experience and shall successfully complete the interior design registration examination as more fully described in Subchapter C of this chapter. For purposes of this section, an Applicant has "approved interior design education" if:

(1) The Applicant graduated from:

(A) a program that has been granted professional status by the Council for Interior Design Accreditation (CIDA) [~~Foundation for Interior Design Education Research (FIDER)~~] or the National Architectural Accreditation Board (NAAB), [~~or from~~]

(B) a program that was granted professional status by CIDA [~~FIDER~~] or NAAB not later than two years after the Applicant's graduation, [~~or from~~]

(C) a program that was granted candidacy status by CIDA or NAAB and became accredited by CIDA or NAAB not later than three years after the Applicant's graduation, or

(D) an interior design education program outside the United States where an evaluation by World Education Services or another organization acceptable to the Board has concluded that the program is substantially equivalent to a CIDA [~~FIDER~~] or NAAB accredited professional program;

(2) - (6) (No change.)

(b) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2008.

TRD-200801556

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 305-8544



## PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

#### **22 TAC §153.5**

The Texas Appraiser Licensing and Certification Board (TALCB) proposes an amendment to §153.5 regarding Fees. The proposed amendment would reduce the fee for temporary nonresident appraiser registration from \$180 to \$150.

Karen Alexander, Director of Staff Services, has determined that for the first five-year period the amendment to §153.5 is in effect, there will be fiscal implications for the state, but not to units of local government, as a result of enforcing or administering the subsection. Approximately 300 appraisers apply for nonresident appraiser registration each fiscal year. The reduction in this fee from \$180 to \$150 will result in a loss of revenue to the state of approximately \$2,250 for the remainder of Fiscal Year 2008 and an estimated \$9,000 for each of the following four fiscal years (2009 - 2012).

Devon Bijansky, Assistant General Counsel, has determined that there is no anticipated impact on local or state employment as a result of implementing the amendment. There will be no adverse economic impact on persons who are required to comply with the proposed amendment. There will be no adverse economic impact on small business or micro-businesses.

Ms. Bijansky has also determined that the anticipated public benefit as a result of this amendment is that the rule will conform to Federal Appraisal Subcommittee requirements as necessary to maintain TALCB's federal certification and ability to continue licensing and certifying appraisers.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Com-

mission/Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Occupations Code §1103.156, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to fees.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

*§153.5. Fees.*

(a) The Board shall charge and the commissioner shall collect the following fees:

(1) - (3) (No change.)

(4) a fee for nonresident appraiser registration of \$150; [~~\$180~~];

(5) - (21) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801484

Devon Bijansky

Assistant General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 465-3900



## **22 TAC §153.17**

The Texas Appraiser Licensing and Certification Board (TALCB) proposes an amendment to §153.17(c), regarding Renewal or Extension of Certification and License or Renewal of Trainee Approval. The proposed amendment would reduce the length of time for deferral of continuing education requirements for appraisers returning from active military service. The period of deferral is reduced from 180 days to 90 days.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendment. There is no anticipated impact on local or state employment as a result of implementing the amendment. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the proposed amendment. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Ms. Bijansky has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit as a result of this amendment is that the rule will conform to Appraisal Subcommittee requirements as required to maintain TALCB's federal certification and ability to continue licensing and certifying appraisers. The amendment will also ensure that appraisers returning from active duty become current on their continuing education requirements more promptly.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Com-

mission/Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Occupations Code §1103.153, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to appraiser continuing education requirements.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendment.

*§153.17. Renewal or Extension of Certification and License or Renewal of Trainee Approval.*

(a) - (b) (No change.)

(c) Renewal of Licenses or Certification for Servicemen on Active Duty.

(1) (No change.)

(2) Appraiser continuing education requirements as set out in §153.18 of this title, that would have been imposed for a timely renewal shall be deferred under this section for a period of up to 90 [~~180~~] days.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801485

Devon Bijansky

Assistant General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 465-3900



## **PART 19. POLYGRAPH EXAMINERS BOARD**

### **CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP**

#### **22 TAC §391.5**

The Polygraph Examiners Board proposes an amendment to §391.5, concerning Supervision and Internship Review.

Section 391.5 is amended to improve internship which will better serve the public needs.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Mr. DiTucci also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the rule will be better trained interns. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the rules as proposed.

Comments on the proposal may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087 MSC 0700, Austin, Texas 78773-0001.

The amendment is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the rule.

*§391.5. Supervision and Internship Review.*

(a) The Intern is required to observe the intern sponsor, or a licensed examiner meeting the requirements to be an Intern Sponsor, conduct a minimum of two polygraph examinations prior to beginning field work in the internship program.

(b) It shall be the responsibility of the Intern Sponsor to ensure that requirements set forth in this chapter are followed. It shall also be the responsibility of the Intern Sponsor to review all polygraph examinations conducted by an Intern Examiner under his/her supervision.

(c) The Intern Sponsor shall be present to directly observe at a minimum the first 5 polygraph examinations conducted in the field by the Intern. The Intern Sponsor shall then be present to directly observe a minimum of 3 additional polygraph examinations conducted by the Intern during the remainder of the internship.

(d) All polygraph examinations administered by the Intern during the internship that are performed outside of the direct observation of the Intern Sponsor shall be performed when the Intern Sponsor is available for real time communication with the Intern (i.e., phone, email, text message) at the time the examinations are conducted.

(e) Polygraph examinations that are administered under the direct observation of the Intern Sponsor shall require the Intern Sponsor to carefully review the charts with the Intern before an opinion is rendered. When polygraph examinations are administered outside of the direct observation of the Intern Sponsor, the Intern is required to advise the examinee of the Intern's opinion of the polygraph examination; however, the examinee shall be advised that the Intern's opinion is preliminary until the examination can be reviewed by the Intern's Sponsor.

(f) Throughout the duration of the internship, it shall be the Intern's responsibility to provide to the Intern Sponsor a weekly report describing all polygraph related work conducted during each week, or a statement indicating that no polygraph examinations were conducted during that week. The Intern Sponsor shall carefully review each polygraph examination administered by the Intern for compliance with the Polygraph Examiner's Act, accurate chart interpretation, and the principles of quality polygraph examination administration.

[(a) The intern sponsor, or a licensed examiner meeting the requirements to be a sponsor, is required to review all examinations conducted by an intern examiner under his/her supervision on a weekly basis. It is the Intern's responsibility to provide the Sponsor a weekly submission of all work conducted or a written statement indicating that no test(s) have been conducted during that week. The sponsor or other licensed examiner shall carefully review each test the intern conducts for compliance with the Polygraph Examiner's Act, accurate chart interpretation and the principles of quality test administration. The sponsor need NOT be present at the time of the examination. The sponsor is not required to review the charts before an opinion is rendered, but the Intern is required to inform the Examinee that the Intern's opinion of the polygraph examination is preliminary until that examination is reviewed by his sponsor.]

(g) ~~[(1)]~~ It is the policy of the Texas Polygraph Examiners Board to provide assistance to Interns and Sponsors.

(h) ~~[(2)]~~ At the request of an Intern or Sponsor, the Board's Executive Officer will review the Intern's work product. This review is intended to correct any problems that may exist in the Internship. Therefore Interns are encouraged to take advantage of this assistance as early in the Internship as practical.

~~[(b)]~~ The review is not an investigation and will not be treated as such. On the other hand, the fact that an Intern's work product was made available for review by the Executive Officer will not be considered a defense to any action by the Board should the Board receive a complaint concerning the Intern on any test review under this policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2008.

TRD-200801531

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 424-2058



## CHAPTER 393. GENERAL

### 22 TAC §393.1

The Polygraph Examiners Board proposes an amendment to §393.1, concerning Meetings.

Section 393.1 is amended to correct a typo from "Texas Government Chapter 552" to "Texas Government Code Chapter 551".

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Mr. DiTucci also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the rule will be the correct citation for the rule. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the rules as proposed.

Comments on the proposal may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087 MSC 0700, Austin, Texas 78773-0001.

The amendment is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the rule.

*§393.1. Meetings.*

Meetings of the Board of Polygraph Examiners will be conducted in accordance with the Texas Open Meetings Act, Texas Government Code Chapter 551 [552].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2008.

TRD-200801530

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 424-2058



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 5. PROPERTY AND CASUALTY INSURANCE**

##### **SUBCHAPTER A. AUTOMOBILE INSURANCE**

##### **DIVISION 3. MISCELLANEOUS INTERPRETATIONS**

##### **28 TAC §5.207**

The Texas Department of Insurance proposes new §5.207, concerning a new Financial Responsibility Consumer Outreach Program (Program). The new section is necessary to implement the provisions of §601.072 of the Transportation Code, enacted by SB 502, 80th Legislature, Regular Session, effective September 1, 2007.

Section 601.072(c) requires the Department to establish an outreach program to inform persons of the requirements of the Texas Motor Vehicle Safety Responsibility Act (Act) (Transportation Code Chapter 601) and the ability to comply with the financial responsibility requirements of the Act through motor vehicle liability insurance coverage.

Section 601.072(c) also requires the Commissioner of Insurance to establish the requirements for the outreach program by rule. Section 601.072(c) specifies that the outreach program must be designed to encourage compliance with the financial responsibility requirements of the Act and must be made available in English and Spanish.

Proposed new §5.207(a) states the purpose of the section which is to establish the requirements for the Financial Responsibility Consumer Outreach Program. Proposed new §5.207(b) - (e) establish the requirements for the Program. Proposed new §5.207(c) requires the Department to develop and periodically update Program materials that are designed to encourage compliance with the financial responsibility requirements. Under proposed §5.207(d), the materials must include information on minimum coverage amounts required to establish financial responsibility under the Act; how to comply with the Act through motor vehicle liability insurance coverage; and how to obtain motor vehicle liability insurance coverage. Proposed §5.207(e) provides that the materials may be in the form of publications, brochures, and fliers and requires that the materials be made available in

English and Spanish. Proposed §5.207(e) also requires that the materials be made available on the Department's website and that they may also be distributed by other means. Under proposed §5.207(f), the Department may also provide press releases and educational sessions. Under proposed §5.207(g), the materials may be incorporated into existing Department consumer outreach programs and program materials.

**FISCAL NOTE.** Marilyn Hamilton, Associate Commissioner for the Property and Casualty Division, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT/COST NOTE.** Ms. Hamilton also has determined that for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of the proposal are increased consumer education and awareness of the requirements of the Texas Motor Vehicle Safety Responsibility Act and the ability to comply with the requirements of the Act through motor vehicle liability insurance coverage resulting in increased compliance with the Act.

No individuals or entities are required to comply with the proposed requirements except the Department. The costs to the Department to comply with the proposal are negligible because the required materials may be incorporated into existing Department consumer outreach programs, publications, and other related materials. Any costs incurred are a result of the enactment of SB 502 by the 80th Texas Legislature and not the proposed rule.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** As required by the Government Code §2006.002(c), the Department has determined that the proposal will not have an adverse economic effect on small or micro businesses because the proposed rule does not apply to any such businesses. The proposed section applies only to the Department. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

**TAKINGS IMPACT ASSESSMENT.** The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 5, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed pursuant to the Transportation Code §601.072(c) and the Insurance Code §36.001. The Transportation Code §601.072(c) requires the Commissioner of Insurance to establish the requirements for an outreach program by rule to inform persons of the requirements of Chapter 601 of the Transportation Code (Texas Motor Vehicle Safety Responsibility Act) and the ability to comply with the financial responsibility requirements of Chapter 601 through motor vehicle liability insurance coverage. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Transportation Code §601.072(c).

§5.207. Financial Responsibility Consumer Outreach Program.

(a) The purpose of this section is to establish the requirements for the Financial Responsibility Consumer Outreach Program (Program), which the department is required to establish under Transportation Code §601.072(c).

(b) As required under Transportation Code §601.072(c), the Program shall inform consumers of the requirements of the Texas Motor Vehicle Safety Responsibility Act (Act) (Transportation Code, Chapter 601) and the ability to comply with the financial responsibility requirements of the Act through motor vehicle liability insurance coverage.

(c) The department shall develop and periodically update Program materials that are designed to encourage compliance with the financial responsibility requirements of the Act.

(d) The Program materials shall include information on:

(1) minimum coverage amounts required to establish financial responsibility under the Act;

(2) how to comply with the Act through motor vehicle liability insurance coverage; and

(3) how to obtain motor vehicle liability insurance coverage.

(e) The Program materials may be in the form of publications, brochures, and fliers. Pursuant to Transportation Code §601.072(c), the Program materials must be made available in English and Spanish. The Program materials must be made available on the department's website and may also be distributed by other means.

(f) The department may also provide press releases and educational sessions.

(g) The Program materials may be incorporated into existing department consumer outreach programs and materials.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2008.

TRD-200801560

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 463-6327



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

##### SUBCHAPTER G. ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, MAINTENANCE PROVIDERS, MAINTENANCE TECHNICIANS, AND SITE EVALUATORS

###### 30 TAC §§30.231, 30.240, 30.242, 30.245, 30.247

The Texas Commission on Environmental Quality (commission) proposes amendments to §§30.231, 30.240, 30.242, 30.245, and 30.247.

###### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rules implement requirements in House Bill (HB) 2482, 80th Legislature, 2007, relating to persons who service or maintain on-site sewage disposal systems using aerobic treatment. HB 2482 impacts two chapters within 30 TAC: Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities. This proposal addresses the revisions to Chapter 30.

The commission administers the On-Site Sewage Facility (OSSF) Program that currently includes executive director delegation of OSSF authority to Counties, Municipalities, and River Authorities. The commission administers the Occupational Licensing and Registration Program for issuances of licenses and registrations required to perform OSSF-related work.

The proposed rules revise existing requirements for the general public, installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents and designated representatives.

The proposed rules further define the commission's regulations regarding licensing and registration of individuals who service or maintain OSSFs using aerobic treatment under Texas Health and Safety Code (THSC), Chapter 366. One purpose in the statute is to allow the commission to develop and implement a new program to register maintenance providers.

The proposed rules specify requirements for maintenance providers to obtain an occupational license to perform service and maintenance of on-site sewage disposal systems using aerobic treatment. Additionally, significant revisions in these rules include the license creation for maintenance providers and creating a new category of registration for maintenance technicians.

###### SECTION BY SECTION DISCUSSION

The proposed amendment to Subchapter G, On-site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators, would revise the current title to include maintenance technicians.

The proposed amendment to §30.231, Purpose and Applicability, would create a licensing requirement for maintenance

providers and registration requirements for maintenance technicians under the section. The proposed amendment would eliminate the September 1, 2008 transitional deadline for becoming a registered maintenance provider under a Wastewater D license because a Wastewater D license would no longer qualify for licensing under the proposed maintenance provider requirements. This proposed amendment would provide for a one-year period for maintenance providers to transition to a new license or registration and allow time for other individuals to obtain a maintenance provider license or maintenance technician registration.

The proposed amendment to §30.240, Qualifications for Initial License, would allow a certified professional soil scientist to obtain a site evaluator license. This amendment would also add new licensing requirements for a maintenance provider.

The proposed amendment to §30.242, Qualifications for License Renewal, would add requirements for renewing a maintenance provider's license and exempts any Installer II or designated representative from maintaining those licenses in order to renew a site evaluator's license.

The proposed amendment to §30.245, Registration of Apprentices, would be re-titled as "Registration of Apprentices and Maintenance Technicians" and would provide requirements for registration as a maintenance technician. It would also hold the apprentice responsible for the three-year registration renewal.

The proposed amendment to §30.247 would revise requirements for registering maintenance providers effective until May 1, 2009.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Strategic Planning and Assessment Section Analyst, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency, and no fiscal implications are expected for other units of state government as a result of administration or enforcement of the proposed rules. Fiscal implications are not anticipated for units of local government such as counties, municipalities, or river authorities who have been delegated regulatory authority for OSSF as a result of the administration or enforcement of the proposed rules in Chapter 30.

The proposed rules implement HB 2482, 80th Legislature, 2007, and affect persons who service or maintain on-site sewage disposal systems using aerobic treatment. The implementation of HB 2482 impacts two chapters within Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities. This fiscal note addresses the revisions to Chapter 30.

The proposed rules allow the commission to develop and implement a new program requiring maintenance providers to obtain an occupational license to perform service and maintenance of on-site sewage disposal systems using aerobic treatment. In addition, the proposed rules create a new occupational license category for maintenance technicians who would have to register with the commission.

The proposed licensing and registration requirements are not expected to result in a significant increase in costs for the commission as any costs would be offset by an increase in agency revenue. The proposed new licensing requirements are anticipated to affect approximately 1,750 maintenance companies and maintenance providers. Under current agency rules, maintenance companies and maintenance providers must register with the

agency and pay \$111 for a three-year period. Under the proposed rules, effective September 1, 2009, individuals who are currently registered as maintenance providers will be re-classified as maintenance technicians. Those individuals who wish to obtain a maintenance provider license would have to meet the newly proposed requirements and pay \$111 for a three-year license. Individuals classified as maintenance technicians under the proposed rules would be required to re-register and continue to pay a fee of \$111 for a three-year period.

It is not known how many of the estimated 1,750 maintenance companies and maintenance providers will choose either the license or registration once their current registration expires. This fiscal note assumes that there will be 425 maintenance companies who will obtain the new maintenance provider license in fiscal year 2009, and that the agency could see additional revenue in the estimated amount of \$47,175. This fiscal note also assumes that there will be 1,325 maintenance providers who meet the proposed maintenance technician requirements and will register with the agency during the next year. This revenue would be deposited into the Occupational Licensing Account 468.

The proposed rules are anticipated to affect approximately 335 counties, cities, districts, and river authorities who have been delegated OSSF regulatory authority by the commission. In general, no fiscal implications are anticipated resulting from the changes proposed in Chapter 30 for these local governments unless they pay for licenses or registrations for OSSF maintenance providers or technicians.

#### PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and additional flexibility for OSSF owners in maintaining their aerobic systems.

In general, the proposed rules are not expected to result in significant fiscal implications for OSSF aerobic system owners, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents or designated representatives.

The proposed new licensing requirements are anticipated to affect approximately 1,750 maintenance companies and maintenance providers. The proposed licensing and registration requirements are not expected to result in a significant increase in costs for the maintenance providers and technicians and any additional costs are expected to be offset by an increase in fees to consumers. Maintenance providers must register with the agency and pay \$111 for a three-year period. There is also expected to be license training costs of approximately \$1,200 to take commission approved training for new maintenance providers and \$600 for maintenance technicians applying for a maintenance provider license. Maintenance technicians who were formerly maintenance providers would be required to register and continue to pay a fee of \$111 for a three-year period. There is also expected to be additional one-time registration training costs of approximately \$600 to take a commission approved basic training course for new maintenance technicians.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. It is estimated that there may be as many as 425 small or micro-businesses affected by the proposed rules. OSSF maintenance providers



and technicians would realize an increase in costs due to the new licensing and registration requirements. Maintenance providers would see an increase in fees of \$30 every three years and an estimated one time cost of \$600 per person for a commission approved training course. Maintenance technicians would see an estimated one time cost of \$600 per person for a commission approved training course. It is assumed that any increase in license and training costs will be passed on to consumers.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to that statute. Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure. The intent of the proposed rules is to revise existing licensing and registration requirements for persons who service or maintain on-site sewage disposal systems using aerobic treatment: installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents and designated representatives. Protection of human health and the environment may be a by-product of these proposed rules, but it is not the specific intent of the rules. Further, these proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These proposed rules are not expected to result in significant fiscal implications for OSSF aerobic system owners, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents or designated representatives. Similarly, these proposed rules are intended to be protective of the environment and public health and safety and are not expected to affect the environment and public health and safety in any material, adverse way. Thus, these proposed rules do not meet the definition of "a major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and do not require a full regulatory impact analysis.

Furthermore, these proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rules do not exceed a federal

standard because there are no federal standards regulating on-site sewage facilities. The proposed rules do not exceed state law requirements because these rules are required by HB 2482. Also, the proposed rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding on-site sewage facilities. And finally, these rules are being proposed under specific state laws, in addition to the general powers of the agency. Therefore, Texas Government Code, §2001.0225 is not applicable to these proposed rules. The commission invites public comment regarding this draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The intent of these proposed rules is to revise existing licensing and registration requirements for persons who service or maintain on-site sewage disposal systems using aerobic treatment: installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents, and designated representatives. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations would not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These proposed rules do not affect private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 29, 2008 at 10:00 am in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environ-

mental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-033-285-CE. The comment period closes May 5, 2008. Copies of the proposed rule-making can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Joseph L. Strouse, P.E., Compliance Support Division, at (512) 239-6003.

#### STATUTORY AUTHORITY

These amendments are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract. Finally, these amendments are proposed under Texas Health and Safety Code (THSC), §366.011, concerning General Supervision and Authority; THSC, §366.012, concerning Rules Concerning On-Site Sewage Disposal Systems; and THSC, §366.071, concerning Occupational Licensing and Registration.

These proposed amendments implement TWC, §§5.013, 5.102, 5.103, 37.001 - 37.015; and THSC, §§366.011, 366.012, and 366.071.

#### §30.231. *Purpose and Applicability.*

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations for a person that:

- (1) constructs any part of an on-site sewage facility;
- (2) performs the duties of a designated representative;
- (3) performs the duties of a site evaluator;
- (4) performs the duties of an apprentice; [or]
- (5) performs the duties of a maintenance provider; or[-]
- (6) performs the duties of a maintenance technician.

(b) A person that performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed or registered according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.244 of this title (relating to Exemptions), and must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

(c) A person that holds a current maintenance provider registration that performs maintenance to on-site sewage disposal systems using aerobic treatment shall be allowed to continue to perform maintenance provider duties until August 31, 2009. Effective September 1, 2009, those individuals shall either hold a:

- (1) maintenance provider license; or
- (2) maintenance technician registration.

~~[(e) A person that holds a Class "D" wastewater operator's license issued on or before August 31, 2006; and that performs maintenance to on-site sewage disposal systems using aerobic treatment shall~~

~~be allowed to continue to perform maintenance-provider duties until August 31, 2008. To continue performing those duties after September 1, 2008, those individuals shall obtain an on-site sewage facility (OSSF) Installer II license or be employed by a maintenance company that employs at least one OSSF Installer II. An individual who performs maintenance to on-site sewage disposal systems using aerobic treatment shall register as required by Subchapter A of this chapter.]~~

(d) Effective September 1, 2009, all current maintenance provider registrations will be converted to maintenance technician registrations.

(e) Individuals renewing their maintenance provider registration after April 30, 2009 will be issued a maintenance technician registration or may apply for a maintenance provider license, provided they meet the qualifications for the initial license of a maintenance provider.

(f) No applications for maintenance provider registrations will be accepted after April 30, 2009.

#### §30.240. *Qualifications for Initial License.*

(a) To obtain an Installer I license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) completed the Installer I basic training course; and

(3) passed the Installer I examination.

(b) To obtain an Installer II license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) met one of the following requirements:

(A) held an Installer I license for at least one year;

(B) held an apprentice registration for at least two years;

or

(C) previously possessed an Installer II license;

(3) completed the Installer II basic training course;

(4) passed the Installer II examination; and

(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the applicant's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the applicant and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:

(A) to document experience as an Installer I, the applicant shall submit either:

(i) sworn statements from at least three individuals for whom the applicant performed construction services, statements cannot be provided by individuals related by blood or marriage to the applicant or applicant's spouse;

(ii) a sworn statement from a designated representative who has approved a minimum of three installations performed by the applicant; or

(iii) other documentation of the applicant's work experience, approved by the executive director;

(B) to document experience as an apprentice, the applicant shall submit either:

(i) a sworn statement from the installer for whom the applicant performed construction services;

(ii) a sworn statement from a designated representative who witnessed the applicant working on at least six OSSF installations; or

(iii) other documentation of the applicant's work experience, approved by the executive director.

(c) To obtain a designated representative license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) completed the designated representative basic training course; and

(3) passed the designated representative examination.

(d) To obtain a site evaluator license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

and

(2) met the following requirements:

(A) complete the site evaluator basic training course;

(B) pass the site evaluator examination; and

(C) possess a current Installer II license, designated representative license, professional engineer license, professional sanitation license, certified professional soil scientist, or professional geoscientist license in the soil science discipline (an individual who maintains a current license through the Texas Board of Professional Geoscientists according to the requirements for professional practice).

(e) Effective September 1, 2009, a maintenance provider must be licensed with the executive director. To obtain a maintenance provider license, a person must:

(1) meet the requirements of Subchapter A of this chapter;

(2) submit a completed application and a \$111 fee to the executive director on a form approved by the executive director;

(3) submit verification that the applicant holds a current Installer II, Class C (or higher) Wastewater license or acceptable documentation of three years experience as a maintenance technician. Registered maintenance provider experience obtained prior to the effective date of these rules may be applied towards the three years of experience as a maintenance technician; and

(4) successfully complete commission-approved courses in basic maintenance and advanced aerobic wastewater treatment related to residential proprietary aerobic treatment units. Advanced aerobic wastewater treatment courses must have been approved after September 1, 2007;

(5) pass the maintenance provider examination; and

(6) any additional information required by the executive director.

#### *§30.242. Qualifications for License Renewal.*

(a) To renew an Installer I, Installer II, designated representative, maintenance provider, or site evaluator license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed a minimum of 24 hours of approved training credits.

(b) In addition to the requirements in subsection (a) of this section, an individual renewing a license for site evaluator shall demonstrate possession of a current license specified in §30.240(d)(2)(C) of this title (relating to Qualifications for Initial License) except for individuals who were granted a site evaluator license on the basis of holding either an Installer II or designated representative license.

(c) For the renewal of a maintenance provider license, the individual is not required to hold a current Installer II license, but must meet all the requirements in subsection (a) of this section.

#### *§30.245. Registration of Apprentices and Maintenance Technicians.*

(a) Apprentice [General]. An individual who enters into an apprenticeship under the supervision of a licensed on-site sewage facility (OSSF) installer shall be registered with the executive director.

(1) [(b)] Application. An application [Applications] for registration [registrations] shall be made on a standard form provided by the executive director. The completed application and a \$111 [an \$84] fee must be submitted to the executive director [by a licensed OSSF installer for each individual that is registered as an apprentice under that installer's supervision].

(2) [(e)] Notification. After verifying that the requirements for registration have been met, the executive director shall mail the registration certificate no later than 45 days after the effective date of the registration. An individual's application may be denied according to §30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation).

(3) [(d)] Expiration [or termination]. The apprentice registration will expire three years after the issuance date of the registration. [on the same expiration date as the supervising OSSF installer's license. Either the supervising OSSF installer or the apprentice may terminate the apprenticeship by providing written notice to the executive director. No reason for the termination is required. Upon receipt of written notification requesting that the apprenticeship be terminated, the executive director shall expire the apprentice's registration under the supervising OSSF installer.]

(4) [(e)] An apprentice's registration may not be renewed if:

[(1)] the supervising OSSF installer's license is not current;

(A) [(2)] the registration has been expired for more than 30 days;

(B) [(3)] the registration has been revoked; or

(C) [(4)] the apprentice has obtained an installer license. [registration has been replaced by a higher class of license.]

(5) [(f)] An apprentice whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the registration expiration date of the current registration, must submit a new application with the appropriate fee. The apprentice will be assigned a new registration number and date, but will not lose any experience gained under the previous registration.

(b) Maintenance technician. An individual who maintains OSSFs for compensation and is not a licensed maintenance provider shall be registered with the executive director. A maintenance technician shall have successfully completed a commission-approved course in basic maintenance provider training.

(1) Application. An application for registration shall be made on a standard form provided by the executive director. The com-

pleted application and a \$111 fee must be submitted to the executive director.

(2) Notification. After verifying that the requirements for registration have been met, the executive director shall mail the registration certificate no later than 45 days after the effective date of the registration. An individual's application may be denied according to §30.33 of this title.

(3) Expiration or termination. The maintenance technician's registration will expire three years after the issuance date of the registration.

(4) A maintenance technician's registration may not be renewed if:

(A) the registration has been expired for more than 30 days;

(B) the registration has been revoked; or

(C) the registration has been replaced by a higher class of license.

(5) A maintenance technician whose registration renewal application is not received by the executive director or is not post-marked within 30 days after the registration expiration date of the current registration, must submit a new application with the appropriate fee. The maintenance technician will be assigned a new registration number and date, but will not lose any experience gained under the previous registration.

§30.247. *Registration of Maintenance Providers.*

The following provisions shall be effective only through April 30, 2009. No new maintenance provider registration applications will be accepted after April 30, 2009.

(1) ~~[(a)]~~ A maintenance provider must be registered with the executive director.

(2) ~~[(b)]~~ To register as required by Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), a person must:

(A) ~~[(1)]~~ meet the requirements of Subchapter A of this chapter;

(B) ~~[(2)]~~ submit a completed application and a \$111 fee to the executive director on a form approved by the executive director; and,

~~[(3)] submit documentation by the manufacturer of an on-site sewage disposal system using aerobic treatment that the applicant is certified to maintain the on-site sewage facility systems under a maintenance contract; and]~~

(C) ~~[(4)]~~ any additional information required by the executive director.

(3) ~~[(e)]~~ To renew a maintenance-provider registration, a maintenance provider must ~~[every three years]~~:

(A) ~~[(1)]~~ meet the requirements in Subchapter A of this chapter; and

(B) ~~[(2)]~~ submit a completed renewal application and a \$111 fee to the executive director on a form approved by the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801536

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 239-0177



## CHAPTER 285. ON-SITE SEWAGE FACILITIES

The Texas Commission on Environmental Quality (commission) proposes amendments to §§285.2 - 285.6, 285.8, 285.13, 285.21, 285.30, 285.32 - 285.34, 285.50, 285.60 - 285.65, 285.70, 285.71, 280.90, and 285.91. The commission also proposes the repeal of §285.7 and new §285.7.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rules implement requirements in House Bill (HB) 2482, 80th Legislature, 2007, persons who service or maintain on-site sewage disposal systems using aerobic treatment. HB 2482 impacts two chapters within 30 TAC: Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities (OSSFs). This proposal addresses the revisions to Chapter 285.

This proposal also addresses a petition filed with the commission by the Texas Environmental Health Association (TEHA) asking that designated representatives be prohibited from participating in on-site related work for compensation in areas beyond their jurisdiction.

Finally, this proposed rulemaking addresses a general revision to a number of different elements within Chapter 285. The elements affected by this proposed rulemaking include: OSSF site requirements for small lots; conditioning proposed permits; retesting protocol of proprietary disposal systems; specification for sewer pipe located between treatment and disposal units; flow equalization; utility regulations for cluster systems; Authorized Agent (AA) review of the executive director's findings; soil bore pit location reference in soil evaluation reports; structural requirements for septic tanks; minimum treatment effluent quality prior to entering any disposal system; define high strength wastewater; foundation sizing requirements; leak testing and water tightness requirements for OSSF tanks; definitions for cluster systems, testing and reporting; OSSF setback requirements; site evaluator requirements; Model Deed requirements; and non-substantive cleanup of errata and inconsistencies in the rules.

The commission administers the OSSF Program that currently includes executive director delegation of OSSF authority to counties, municipalities, special districts, and river authorities.

The proposed rules revise existing requirements for the general public, installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents, and designated representatives.

The proposed rules further define the commission's regulations regarding servicing or maintenance of OSSFs using aerobic treatment under Texas Health and Safety Code (THSC), Chapter 366. One purpose in the statute is to allow homeowners to maintain their own aerobic systems without the need for training and reporting and to remove existing requirements for register-

ing maintenance providers. It also allows the commission to develop and implement a new program to register maintenance providers. In Fiscal Year 2006 alone, there were more than 37,000 newly permitted OSSFs in Texas.

The proposed rules specify requirements for maintenance providers to obtain an occupational license to perform service and maintenance of on-site sewage disposal systems using aerobic treatment. Additionally, the rules create a new registration category for maintenance technicians.

## SECTION BY SECTION DISCUSSION

### *Subchapter A - General Provisions*

The proposed amendment to §285.2(10), Definitions, would revise the current definition for cluster systems to include units which contribute sewage to a central collection, treatment or disposal system, such as condominiums.

The proposed amendment to §285.2(19), would expand the definition of direct supervision to include the working relationship between maintenance providers and maintenance technicians.

The proposed amendment to §285.2(36), would eliminate the definition of a maintenance company, effective September 1, 2009, and creates a new definition for a maintenance provider and renumbers the definition of a maintenance provider to §285.2(37).

The proposed amendment to §285.2(37), would renumber the definition for maintenance findings to §285.2(36).

The proposed amendment to §285.2(38), would create a new definition for maintenance technician which would facilitate the provisions within Chapter 30 for registering individuals who maintain aerobic systems under the supervision of a maintenance provider.

The proposed amendments to §285.2, would provide for the renumbering of paragraphs (39) - (72) to incorporate the new definition for maintenance technician.

The proposed amendment to §285.2(73), would create a new definition for testing and reporting which would describe the minimum scope for inspection systems requiring testing and reporting and would renumber the definition for a well from paragraph (72) to (74).

The proposed amendment to §285.3(a)(4), General Requirements, would provide for requirements under which a permitting authority may require conditions for a permit in order to ensure that the permitted OSSF system will operate in accordance with the planning materials and the final approval of a proposed OSSF.

The proposed amendment to §285.3(b)(3), would change the terminology from a "deed" to an "affidavit" for OSSFs which require maintenance, including the requirements contained within the recorded affidavit. The proposed amendment would remove the necessity of a maintenance contract and would allow the homeowner to either self-maintain the system or enter into a contract with a maintenance provider.

The proposed amendment to §285.3(g), would eliminate the outdated reference to 30 TAC Chapter 331.

The proposed amendment to §285.4(b)(1), Facility Planning, would eliminate the redundancy in requirements for small lots or tracts created before January 1, 1988, by striking requirements and adding a general statement that OSSFs on small lots or

tracts of land must comply with the requirements of Chapter 285.

The proposed amendment to §285.4(c), would clarify the current language for subdivision or development plans and require buildings with food service establishments and restaurants to have twice the initial required disposal area available for disposing wastewater in order to allow for growth and expansion.

The proposed amendment to §285.5(a)(3)(A), Submittal Requirements for Planning Materials, would eliminate the outdated reference to the Civil Statutes requiring a permit applicant to have a professional engineer design the OSSF when the foundation size exceeds 5,000 square feet. This portion of the Civil Statute has been recodified within the Texas Occupations Code (§1001.56(f)) and is not a requirement related to OSSF siting, design, permitting, construction, operation, or inspection.

The proposed amendment to §285.5(a)(3)(B) and (C), would provide for verifications required from a professional engineer. Specifically, these are to verify the structural requirements for septic tanks and to provide verification of OSSF designs when OSSFs are proposed in floodways.

The proposed amendment to §285.6, Cluster Systems, would: prohibit condominiums with cluster systems; prohibit permitting authorities from granting a permit for condominiums with cluster systems; provide clarification that a cluster-type system can be permitted for rental or lease-related properties; and would provide notice that a Certificate of Convenience and Necessity is required when compensation is collected for repair, maintenance and operation of a cluster system, as defined in 30 TAC Chapter 291, Utility Regulations.

The proposed repeal to §285.7, Maintenance Requirements, would eliminate the current requirements for OSSF maintenance and be replaced with the new §285.7, Maintenance Requirements. This new section would provide requirements for maintenance providers and maintenance technicians, clarify the difference between the initial two-year service policy and maintenance contracts after the initial two-year service policy, clarify the initial two-year policy with respect to the sale of the residence and would require manufacturers to make replacement parts available to homeowners, installers, and maintenance providers. This new section would provide for a one-year transition period for maintenance companies and maintenance providers to comply with new licensing and registration requirements. This new section would differentiate between the current citing for the sample testing and reporting record in Figure: 30 TAC §285.90(3) and the required testing and reporting in the table in Figure: 30 TAC §285.91(4) and would include maintenance procedures approved by the executive director. Finally, this new section would allow a permitting authority to inspect an aerobic treatment system at any time.

The proposed amendment to §285.8, Multiple On-Site Sewage Facility (OSSF) Systems on One Large Tract of Land, would eliminate the outdated reference to 30 TAC Chapter 331.

### *Subchapter B - Local Administration of the OSSF Program*

The proposed amendment to §285.13(b)(3), Revocation of Authorized Agent Delegation, would remove the allowance for other authorized agents to review the commission's investigation findings of another authorized agent.

### *Subchapter C - Commission Administration of the OSSF Program in Areas Where No Authorized Agent Exists*

The proposed amendment to §285.21(c), Fees, would replace "Texas Natural Resource Conservation Commission" with "Texas Commission on Environmental Quality."

#### *Subchapter D - Planning, Construction, and Installation Standards for OSSFs*

The proposed amendment to §285.30, Site Evaluation, would require all design planning materials to include soil borings or backhoe pits, slope patterns, 100-year flood boundaries, and separation distances.

The proposed amendment to §285.32, Criteria for Sewage Treatment Systems, would provide for specific site and related OSSF design details such as: preventing tank infiltration by requiring sealed risers, watertight caps, and prevention of unauthorized access; structural verification by a professional engineer for the manufacture of pre-cast tanks with a 30-day notification time limit to the permitting authority; leak testing for tanks; proprietary tank size conformance with revised §285.91(2); and provides for influent limits and use of proprietary systems for pre-treatment. The proposed amendment would remove the mandatory seven-year proprietary disposal system testing protocol. Finally, the proposed amendment to §285.32(f), Other Design Considerations, would provide for listing limits for high strength sewage, OSSF biochemical oxygen demand (BOD) design justification and adding design consideration for flow equalization.

The proposed amendment to §285.33, Criteria for Effluent Disposal Systems, would provide for pressure-rated pipe within disposal areas with the exception of drip disposal tubing. This proposed amendment would also: add the minimum disinfection requirement for effluent in the pump tank to meet the requirements in the table in Figure: 30 TAC §285.91(4), and revise the effective date for color-coding pipe.

The proposed amendment to §285.34(d), Grease Interceptors, would remove the statement "or under any other standards approved by the executive director" and replace it with the reference to the 1980 EPA Design Manual: Onsite Wastewater Treatment and Disposal Systems.

#### *Subchapter F - Licensing and Registration Requirements for Installers, Apprentices, Designated Representatives, Site Evaluators, and Maintenance Providers and Maintenance Companies*

The proposed amendment to Subchapter F, §285.50 would eliminate the word "companies" and add "providers and maintenance technicians" to the title and throughout the proposed rules. The proposed amendment would also remove the effective date of September 1, 2002, to obtain a site evaluator's license.

The proposed amendment to §285.60, Duties and Responsibilities of Site Evaluators, would eliminate the necessity to maintain an installer or designated representative's license after being granted a site evaluator's license and would update the reference to include professional geoscientist which is a license that became effective after this section was last amended.

The proposed amendment to §285.61, Duties and Responsibilities of Installers, would eliminate the requirements for installers to: maintain aerobic treatment systems, train a homeowner in aerobic system maintenance, or make replacement parts available to the homeowner for aerobic systems; and require installers to make all aerobic system repairs in accordance with the approved planning materials.

The proposed amendment to §285.62, Duties and Responsibilities of Designated Representatives, would require designated representatives to verify the existence of a maintenance contract between the homeowner and the maintenance provider or, until September 1, 2009, a maintenance company. This proposed amendment would require written permission from the designated representative's employer if the designated representative desires to perform OSSF-related activities for compensation outside of the authorized agent's regulatory jurisdiction.

The proposed amendment to §285.63, Duties and Responsibilities of Apprentices, would add the requirement that apprentices maintain a registration with the commission and renumber the remainder of that section.

The proposed amendment to §285.64, Duties and Responsibilities of Maintenance Companies, would eliminate the word "companies" from the heading and add "providers and maintenance technicians." The proposed amendment would create two sections within these requirements - one for maintenance providers and the other for maintenance technicians. The proposed amendment would add the requirement for licensure of maintenance providers and registration for maintenance technicians. The amendment would eliminate the need for: a maintenance provider to work in a company under an Installer II and eliminate the need for maintenance providers or maintenance technicians to obtain manufacturer's certification. The proposed amendment would eliminate the requirement to train a homeowner in aerobic system maintenance when requested by the homeowner. The proposed amendment would require maintenance technicians to: be registered with the commission; represent the maintenance provider while performing maintenance on an OSSF; perform services associated with OSSF maintenance under the direct supervision and direction of the maintenance provider on-site or be in direct communication with the maintenance provider; refrain from receiving compensation for OSSF maintenance from anyone except the supervising maintenance provider; maintain a current address and phone number with the executive director and submit any change in address or phone number to the executive director in writing within 30 days after the date of the change; and not advertise or otherwise portray themselves as a maintenance provider.

The proposed amendment to §285.65, Suspension or Revocation of License or Registration, would amend the current list of causes for suspension or revocation to include provisions for maintenance providers, maintenance technicians and would amend the statutory authority under which the commission may suspend or revoke a license or registration by adding reference to Texas Water Code (TWC), §7.303 and eliminate the reference to 30 TAC §30.33.

#### *Subchapter G - OSSF Enforcement*

The proposed amendment to §285.70, Duties of Owners With Malfunctioning OSSFs, would add provisions from HB 2482 under which a designated representative could fine a homeowner who maintains their own aerobic system and violates the Chapter 285 rules, and in the case of repeat non-compliance, the proposed amendment would require the homeowner to enter into a maintenance contract with a maintenance provider.

The proposed amendment to §285.71, Authorized Agent Enforcement of OSSFs, would expand the pool of individuals whom a DR could receive complaints against to include professional engineers performing site evaluations, maintenance providers, and maintenance technicians.

## Subchapter I - Appendices

The proposed amendment to §285.90, Figures, would revise the title of Figure 2, "Model Deed and Affidavit Language" to "Model Affidavit to the Public" and would incorporate changes in the rules for homeowners with OSSFs that require maintenance. The proposed amendment to Figure 3, Sample Testing and Reporting Record, would eliminate the need for homeowners to record or send testing and reporting results to permitting authorities. The proposed amendment would also require that the maintenance provider check the sludge condition and to send the owner a copy of the testing and reporting results.

The proposed amendment to §285.91, Tables, would revise the title of Table II, "Septic Tank Minimum Liquid Capacity" to "Septic Tank and Aerobic Treatment Unit Sizing." The proposed amendment would add a section to this table entitled "Aerobic Treatment Unit Sizing For Residences", which require slightly larger treatment tanks for proposed aerobic systems. This change is being proposed based on input from the OSSF work group. The proposed amendment to Table III, Wastewater Usage Rate, would add a provision for restaurant influent wastewater quality, revise the commission's name, and correct a spelling error. The proposed amendment to Table X, Minimum Required Separation Distances for On-Site Sewage Facilities, would add categories for setbacks to underground and overhead easements, include retention ponds and basins, allow solid pipe in sleeved lines under driveways and sidewalks, remove setback requirements for secondary effluent and building foundations, and add requirements for drainage easements and detention ponds. The proposed amendment to Table XI, Intermittent Sand Filter Media Specifications (ASTM C-33), would correct the current spelling and terminology of "finess modulus" to "fineness modulus". Finally, the proposed amendment to Table XII, OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements, would eliminate the requirement for a maintenance contract as well as eliminate testing and reporting requirements for homeowners who maintain their own aerobic system.

### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Strategic Planning and Assessment Section Analyst, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state government as a result of administration or enforcement of the proposed rules. Units of local government such as counties, municipalities, or river authorities who have been delegated regulatory authority for OSSFs may experience fiscal implications as a result of the administration or enforcement of the proposed rules, but these fiscal implications are not anticipated to be significant.

The proposed rules implement HB 2482, 80th Legislature, 2007, and affect persons who service or maintain on-site sewage disposal systems using aerobic treatment. The implementation of HB 2482 impacts two chapters within 30 TAC Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities. This fiscal note addresses the revisions to Chapter 285.

The proposed rules allow homeowners to maintain their aerobic septic systems, but they also include an administrative penalty for homeowners who fail to maintain their systems under the proposed rules. In addition, the proposed rulemaking addresses a number of different elements within Chapter 285, including issues concerning designing, permitting, and operating on-site

sewage facilities. In general, these revisions are not expected to result in significant fiscal implications for the general public, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents, or designated representatives. The proposed rules also address a petition by the TEHA who requested a prohibition of designated representatives performing on-site related work in areas beyond their regulatory jurisdiction. The proposed changes in response to this request are not expected to result in fiscal implications, though there may be a decrease in the number of experienced personnel in certain rural areas of the state who perform on-site related work.

The proposed rules allow the commission to develop and implement a new program requiring maintenance providers to obtain an occupational license to perform service and maintenance of on-site sewage disposal systems using aerobic treatment. In addition, the proposed rules create a new occupational license category for maintenance technicians who would have to register with the commission. The proposed licensing and registration requirements are discussed in the fiscal note for the Chapter 30 proposal.

The proposed rules are anticipated to affect approximately 335 counties, cities, districts, and river authorities who have been delegated OSSF regulatory authority by the commission. In general, no significant fiscal implications are anticipated for these local governments as a result of the proposed rules. The proposed rules allow homeowners to maintain their own aerobic systems without the need for training and reporting to local authorities. Local governments, therefore, will not be receiving as many maintenance reports, resulting in a possible reduction in administrative costs. Because homeowners are no longer required to be trained in system maintenance, there may be an increased responsibility on local governments to respond to complaints, conduct inspections, or initiate enforcement activities.

### PUBLIC BENEFITS AND COSTS

Mr. Horvath determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and additional flexibility for OSSF owners in maintaining their aerobic systems.

In general, the proposed rules are not expected to result in significant fiscal implications for OSSF aerobic system owners, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents, or designated representatives.

Since homeowners are no longer required to be trained in system maintenance and there is no longer the necessity for maintenance contracts between maintenance providers and homeowners, homeowners may realize lower costs to annually maintain their aerobic systems. However, those who do choose to have maintenance contracts may realize slightly higher costs as the costs for the new licensing requirements are expected to be passed on to consumers. These costs are not expected to be significant.

The proposed rulemaking addresses a general revision to a number of different elements within Chapter 285 including the following: OSSF site requirements for small lots; conditioning proposed permits; retesting protocol of proprietary disposal systems; specification for sewer pipe located between treatment and disposal units; flow equalization; utility regulations for cluster systems; AA review of the executive director's findings; soil bore pit location reference in soil evaluation reports;

structural requirements for septic tanks; minimum treatment effluent quality prior to entering any disposal system; definition of high strength wastewater; foundation sizing requirements; leak testing and water tightness requirements for OSSF tanks; definitions for cluster systems, testing and reporting; OSSF setback requirements; site evaluator requirements; Model Deed requirements; and non-substantive cleanup of errata. These proposed changes are not expected to result in significant fiscal implications for the general public, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents, or designated representatives.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. It is estimated that there may be as many as 425 small or micro-businesses affected by the proposed rules. None of the proposed changes for Chapter 285 are expected to result in fiscal implications for small or micro-businesses.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute. A "major environmental rule" is a rule that is specifically intended to protect the environment or to reduce risks to human health from environmental exposure, and that may also have a material, adverse affect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although the intent of these proposed rules is to protect the environment or reduce risks to human health from environmental exposure, these rules are not expected to cause any adverse material effects, and, therefore do not meet the definition of a "major environmental rule." The intent of these proposed rules is to implement the provisions of HB 2482 (80th Legislature, 2007) regarding homeowner maintenance of aerobic treatment systems (ATUs) and develop a new program for licensing maintenance providers and registering maintenance technicians; to address a petition by TEHA requesting that designated representatives be prohibited from performing on-site related work in areas beyond their regulatory jurisdiction; and to address a number of other issues concerning the design, permitting, and operation of on-site sewage facilities. In general, these revisions are not expected to result in significant fiscal implications for the general public, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents or designated representatives. Similarly, these proposed rules are intended to be protective of the environment and public health and safety and

are not expected to affect the environment and public health and safety in any material, adverse way. Thus, these proposed rules do not meet the definition of "a major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and do not require a full regulatory impact analysis.

Furthermore, these proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rules do not exceed a federal standard because there are no federal standards regulating on-site sewage facilities. The proposed rules do not exceed state law requirements because many changes to these rules are required by HB 2482. Also, the proposed rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding on-site sewage facilities. Finally, these rules are being proposed under specific state laws, in addition to the general powers of the agency. Therefore, Texas Government Code, §2001.0225 is not applicable to these proposed rules. The commission invites public comment regarding this draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The intent of these proposed rules is to implement the provisions of HB 2482 (80th Regular Legislature, 2007) regarding homeowner maintenance of ATUs and develop a new program for licensing maintenance providers and registering maintenance technicians; to address a petition by the TEHA requesting that designated representatives be prohibited from performing on-site related work in areas beyond their regulatory jurisdiction; and to address a number of other issues concerning the design, permitting, and operation of on-site sewage facilities. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations would not affect a landowner's rights in private real property because this rulemaking does not burden or restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These proposed rules do not affect private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and



found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The applicable goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests.

The specific CMP policies applicable to these proposed amendments include Nonpoint Source (NPS) Water Pollution and require, under the THSC, Chapter 366, governing on-site sewage disposal systems, that on-site disposal systems be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters. The proposed amendments require that applicants, maintenance providers and maintenance technicians show protectiveness through proper maintenance of aerobic systems and the amendments are therefore, consistent with the CMP policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rules do not relax current treatment or disposal standards.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 29, 2008 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-033-285-CE. The comment period closes May 5, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Joseph L. Strouse, P.E., Compliance Support Division, at (512) 239-6003.

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §§285.2 - 285.8

#### STATUTORY AUTHORITY

These amendments and new section are proposed under THSC, §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments and new section are also proposed under the general authority granted in TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments and new section are further proposed under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These proposed amendments and new section implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

#### §285.2. Definitions.

The following words and terms in this section are in addition to the definitions in Chapter 3 and Chapter 30 of this title (relating to Definitions and Occupational Licenses and Registrations). The words and terms in this section, when used in this chapter, have the following meanings.

(1) - (9) (No change.)

(10) Cluster system--A system that collects, treats or disposes of no more than 5,000 gallons of sewage per day from more than one sewage generating structure. A sewage generating structure includes a residence, condominium, business, or any structure that contains commodes, sinks, showers, baths or laundry facilities. [A sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units on separate legal tracts where the total combined flow from all units does not exceed 5,000 gallons per day.]

(11) - (18) (No change.)

(19) Direct supervision--The responsibility of an installer to oversee, direct, and approve all actions of an apprentice relating to the construction of an on-site sewage facility, or the responsibility of a maintenance provider to oversee, direct, and approve all actions of a maintenance technician relating to the maintenance of an on-site sewage facility.

(20) - (35) (No change.)

(36) Maintenance findings--The results of a required performance check or component examination on a specific on-site sewage facility. [Maintenance company--A person or business that maintains on-site sewage facilities. For the purposes of this chapter, the definition of a maintenance company includes all maintenance providers, as defined in §30.7 of this title (relating to Definitions).]

(37) Maintenance provider--an individual who maintains on-site sewage facilities for compensation. Through August 31, 2009, a maintenance company is a person or business that maintains on-site sewage facilities for compensation. [Maintenance findings--The results of a required performance check or component examination on a specific on-site sewage facility.]

(38) Maintenance technician--An individual who holds a valid registration issued by the executive director to maintain on-site sewage facilities and works under a maintenance provider.

(39) [(38)] Malfunctioning OSSF--An on-site sewage facility that is causing a nuisance or is not operating in compliance with this chapter.

(40) [(39)] Manufactured housing community--Any area developed or used for lease or rental of space for two or more manufactured homes.

(41) [(40)] Multi-unit residential development--Any area developed or used for a structure or combination of structures designed to lease or rent space to house two or more families.

(42) [(41)] Notice of approval--Written permission from the permitting authority to operate an on-site sewage facility. The notice of approval is the final part of the permit.

(43) [(42)] Nuisance--

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons;

(B) an overflow from a septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage facility; or

(C) a blatant discharge from an OSSF.

(44) [(43)] On-site sewage disposal system--One or more systems that:

(A) do not treat or dispose of more than 5,000 gallons of sewage each day; and

(B) are used only for disposal of sewage produced on a site where any part of the system is located.

(45) [(44)] On-site sewage facility (OSSF)--An on-site sewage disposal system.

(46) [(45)] On-site waste disposal order--An order, ordinance, or resolution adopted by a local governmental entity and approved by the executive director.

(47) [(46)] Operate--To use an on-site sewage facility.

(48) [(47)] Owner--A person who owns property served by an on-site sewage facility (OSSF), or a person who owns an OSSF. This includes any person who holds legal possession or ownership of a total or partial interest in the structure or property served by an OSSF.

(49) [(48)] Owner's agent--An installer, professional sanitarian, or professional engineer who is authorized to submit the permit application and the planning materials to the permitting authority on behalf of the owner.

(50) [(49)] Permit--An authorization, issued by the permitting authority, to construct or operate an on-site sewage facility. The permit consists of the authorization to construct (including the approved planning materials) and the notice of approval.

(51) [(50)] Permitting authority--The executive director or an authorized agent.

(52) [(51)] Planning material--Plans, applications, site evaluations, and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit.

(53) [(52)] Platted--The subdivision of property which has been recorded with a county or municipality in an official plat record.

(54) [(53)] Pretreatment tank--A tank placed ahead of a treatment unit that functions as an interceptor for materials such as plas-

tics, clothing, hair, and grease that are potentially harmful to treatment unit components.

(55) [(54)] Professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(56) [(55)] Professional sanitarian--An individual registered by the Texas Department of Health to carry out educational and inspection duties in the field of sanitation in the State of Texas.

(57) [(56)] Proprietary system--An on-site sewage facility treatment or disposal system that is produced or marketed under exclusive legal right of the manufacturer or designer or for which a patent, trade name, trademark, or copyright is used by a person or company.

(58) [(57)] Recharge feature--Permeable geologic or man-made feature located on the Edwards Aquifer Recharge Zone where:

(A) a potential for hydraulic interconnectedness between the surface and the aquifer exists; and

(B) rapid infiltration from the on-site sewage facility to the subsurface may occur.

(59) [(58)] Recreational vehicle park--A single tract of land that has rental spaces for two or more vehicles that are intended for recreational use only and has a combined wastewater flow of less than 5,000 gallons per day.

(60) [(59)] Regional office--A regional office of the agency.

(61) [(60)] Repair--To replace any components of an on-site sewage facility (OSSF) in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.

(62) [(61)] Scum--A mass of organic or inorganic matter which floats on the surface of sewage.

(63) [(62)] Secondary treatment--The process of reducing pollutants to the levels specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

(64) [(63)] Seepage pit--An unlined covered excavation in the ground which operates in essentially the same manner as a cesspool.

(65) [(64)] Septic tank--A watertight covered receptacle constructed to receive, store, and treat sewage by: separating solids from the liquid; digesting organic matter under anaerobic conditions; storing the digested solids through a period of detention; and allowing the clarified liquid to be disposed of by a method approved under this chapter.

(66) [(65)] Sewage--Waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

(67) [(66)] Single family dwelling--A structure that is either built on or brought to a site, for use as a residence for one family. A single family dwelling includes all detached buildings located on the residential property and routinely used only by members of the household of the single family dwelling.

(68) [(67)] Site evaluator--An individual who holds a valid license issued by the executive director according to Chapter 30 of

this title (relating to Occupational Licenses and Registrations) and who conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an on-site sewage facility. A professional engineer may perform site evaluations without obtaining a site evaluator license.

(69) [(68)] Sludge--A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

(70) [(69)] Soil--The upper layer of the surface of the earth that serves as a natural medium for the growth of plants.

(71) [(70)] Soil absorption system--A subsurface method for the treatment and disposal of sewage which relies on the soil's ability to treat and absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

(72) [(71)] Subdivision--A division of a tract of land, regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

(73) Testing and reporting--Routine inspection, sampling and performance checks performed by the maintenance provider or maintenance technician and the submittal of findings to the OSSF owner and the permitting authority. Testing and reporting does not include repair or replacement of parts.

(74) [(72)] Well--A water well, injection well, dewatering well, monitoring well, piezometer well, observation well, or recovery well as defined under Texas Water Code, Chapters 26, 32, and 33, and 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

#### §285.3. *General Requirements.*

(a) Permit required. A person shall hold a permit for an OSSF unless the OSSF meets one of the exceptions in subsection (f) of this section.

(1) - (3) (No change.)

(4) Conditioning of Permits. The permitting authority may require conditions to a permit in order to ensure that the permitted OSSF system will operate in accordance with the planning materials and system approval. Failure to comply with these conditions is a violation of the permit and this chapter. Any violation of a condition of a permit that would be considered an alteration as defined in §285.2(2) of this title (relating to Definitions) would require a new permit.

(b) General Application Requirements.

(1) - (2) (No change.)

(3) Before the permitting authority issues an authorization to construct, the owner of OSSFs identified in §285.91(12) of this title (relating to Tables) or the owner's agent, must record an [the] affidavit in the county deed records of the county or counties where the OSSF is located. Additionally, the owner or the owner's agent must submit, to the permitting authority, an affidavit affirming the recording. An example of the affidavit [deed language and affidavit] is located in §285.90(2) of this title (relating to Figures). The affidavit [deed recording] must include:

(A) the owner's full name;

(B) the legal description of the property;

(C) that an OSSF requiring [a] continuous maintenance [contract] is located on the property;

(D) that the permit for the OSSF shall ~~[must]~~ be transferred to the new owner upon transfer of the property; and

(E) that at any time after the initial two-year service policy, the owner of an aerobic treatment system for a single family residence shall either obtain a maintenance contract within 30 days of the transfer or maintain the system personally.

~~[(E) that maintenance must be performed by an approved maintenance company; and]~~

~~[(F) that a signed maintenance contract must be submitted to the appropriate permitting authority within 30 days after the property has been transferred.]~~

(c) - (f) (No change.)

(g) Exclusions. The following systems are not authorized by this subchapter and may require a permit under Chapter 205 or Chapter 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively) ~~[or an authorization under Chapter 331 of this title (relating to Underground Injection Control)]~~:

(1) - (4) (No change.)

(h) - (i) (No change.)

#### §285.4. *Facility Planning.*

(a) (No change.)

(b) Approval of OSSF systems on existing small lots or tracts.

(1) Existing small lots or tracts~~[-]~~ that do not meet the minimum lot size requirements under subsection (a)(1)(A) or (B) of this section, and were either subdivided before January 1, 1988, or had a site-specific sewage disposal plan approved between January 1, 1988, and the effective date of this section, are allowed to use OSSFs, but the OSSFs must comply with the requirements set forth in this Chapter. ~~[may be approved for an OSSF provided:]~~

~~[(A) minimum separation distances in §285.31(d) of this title (relating to General Criteria for Treatment and Disposal Systems) are maintained;]~~

~~[(B) the site has been evaluated according to §285.30 of this title (relating to Site Evaluation); and]~~

~~[(C) all other requirements of this chapter regarding treatment and disposal are met.]~~

(2) (No change.)

(c) Review of subdivision or development plans. Persons proposing residential subdivisions, manufactured housing communities, multi-unit residential developments, business parks, or other similar structures that use OSSFs for sewage disposal shall submit planning materials for these developments to the permitting authority and receive approval prior to submitting an OSSF application. [Before the permit process for individual OSSFs can begin, persons proposing residential subdivisions, manufactured housing communities, multi-unit residential developments, business parks, or other similar uses and using OSSFs for sewage disposal shall submit planning materials for these developments to the permitting authority. The planning materials shall be prepared by a professional engineer or professional sanitarian and shall include an overall site plan, topographic map, 100-year floodplain map, soil survey, location of water wells, locations of easements as identified in §285.91(10) of this title (relating to Tables); and a complete report detailing the types of OSSFs to be considered and their compatibility with area-wide drainage and groundwater. A comprehensive drainage plan shall also be included in these planning materials. The permitting authority will either approve or deny the planning materials, in writing, within 45 days of receipt.]

(1) The planning materials must be prepared by a professional engineer or professional sanitarian and must include:

(A) an overall site plan;

(B) a topographic map;

(C) a 100-year floodplain map;

(D) a soil survey;

(E) the locations of water wells;

(F) the locations of easements, as identified in §285.91(10) of this title (relating to Tables);

(G) a comprehensive drainage plan;

(H) a complete report detailing the types of OSSFs to be considered and their compatibility with area-wide drainage and groundwater; and

(I) other requirements, including Edwards Aquifer requirements that are pertinent to the proposed OSSF.

(2) If the proposed development includes restaurants or buildings with food service establishments, the planning materials must show adequate land area for doubling the land needed for the treatment units. The designer may consider increasing the amount of land area beyond doubling the minimum required area.

(3) The permitting authority will either approve or deny the planning materials, in writing, within 45 days of receipt.

#### *§285.5. Submittal Requirements for Planning Materials.*

(a) Submittal of planning material. Planning materials required under this chapter shall be submitted by the owner, or owner's agent, to the permitting authority for review and approval according to this section. All planning materials shall comply with this chapter and shall be submitted according to §285.91(9) of this title (relating to Tables). A legal description of the property where an on-site sewage facility (OSSF) is to be installed must be included with the permit application. Additionally, a scale drawing of the OSSF, all structures served by the OSSF, and all items specified in §285.30(b) of this title (relating to Site Evaluation) and §285.91(10) of this title [~~(relating to Tables)~~] must be included with the permit application.

(1) - (2) (No change.)

(3) Planning materials prepared by a professional engineer. OSSF planning materials shall be prepared by a professional engineer (with appropriate seal, date, and signature) as follows, unless otherwise specified in this chapter:

~~[(A) any proposals for an OSSF for a structure not exempted by Texas Civil Statutes, Article 3271a, §20; or]~~

(A) ~~[(B)]~~ all proposals for non-standard treatment systems that require secondary treatment as detailed in Subchapter D of this chapter; or ~~[-]~~

(B) verifications that precast concrete septic tanks conform to the requirements of §285.32(b)(1)(E)(i) of this title (relating to Criteria for Sewage Treatment Systems); or

(C) designs demonstrating that the requirements of §285.31(c)(2) of this title (relating to Selection Criteria for Treatment and Disposal Systems) related to the regulated floodway have been met.

(b) Review of planning materials.

(1) (No change.)

(2) Non-standard planning materials. The executive director shall review and respond to initial plans for all non-standard planning material for any system described in §285.32(d) and §285.33(d)(6) of this title [~~(relating to Criteria for Sewage Treatment Systems and Criteria for Effluent Disposal Systems, respectively)~~] within ten calendar days of receipt of the planning materials. After favorable review by the executive director, the same non-standard system planning materials may be reviewed and approved by the authorized agent for different locations, provided the same site conditions exist for which the planning materials were developed.

(3) (No change.)

#### *§285.6. Cluster Systems.*

(a) Cluster systems are not authorized under this chapter to serve: ~~[Cluster systems are not authorized under this chapter after the effective date of these rules. Cluster systems may be authorized under other chapters of this title including Chapter 331 of this title (relating to Underground Injection Control).]~~

(1) sewage generating structures on separate legal tracts of land; or

(2) multiple sewage generating structures where the ownership of any sewage generating structure may be conveyed separately from the other sewage generating structures served by the cluster system, including cluster systems serving condominiums.

(b) Notwithstanding subsection (a) of this section, cluster systems may be permitted under this chapter for: ~~[Existing cluster systems may not be repaired, altered, or extended under this chapter and may require authorization under other chapters of this title including Chapter 331 of this title when the system is malfunctioning or expanded.]~~

(1) Manufactured housing communities or multi-unit residential developments on a single tract of land that either rent or lease space and are served by an OSSF; or

(2) single residential units connected to their outbuildings such as barns, guest quarters, pool houses, or similar structures on a single tract of land.

(c) The authorized agent may not approve planning materials under this chapter for a subdivision which would create a cluster system that is prohibited under this section.

(d) Existing cluster systems prohibited under this section may not be repaired, altered, or extended under this chapter and may require authorization under other chapters of this title including Chapter 305 of this title (relating to Consolidated Permits) when the system is malfunctioning or expanded.

(e) Persons (as defined in Texas Water Code, §13.002(15)), collecting or receiving compensation, whether directly or indirectly, for operating, maintaining or controlling facilities for providing sewer service are retail public utilities and shall meet the requirements of a retail public utility, as defined in Chapter 291 of this title (relating to Utility Regulations).

#### *§285.7. Maintenance Requirements.*

(a) Maintenance contract requirements. Maintenance contract requirements for all on-site sewage facilities (OSSFs) are identified in §285.91(12) of this title (relating to Tables). The permit holder shall ensure that the OSSF is properly operated and maintained in accordance with this chapter. Homeowners who maintain their own systems are exempt from contract requirements, as provided in subsection (d)(4) of this section.

(b) Maintenance provider.

(1) Effective September 1, 2009, in order to perform maintenance on an OSSF, an individual must either be licensed by the TCEQ as a maintenance provider or registered by the TCEQ as a maintenance technician and employed by a licensed maintenance provider. Prior to September 1, 2009, in order to perform maintenance on an OSSF, an individual must be registered by the TCEQ as a maintenance provider.

(2) Effective September 1, 2009, the maintenance provider will be responsible for fulfilling the requirements of the maintenance contract. The maintenance provider will be responsible for the work performed by registered maintenance technicians under their direct supervision. Prior to September 1, 2009, the maintenance company will be responsible for fulfilling the requirements of the maintenance contract.

(3) Effective September 1, 2009, the maintenance provider must sign all maintenance reports.

(c) Initial Two-Year Service Policy. The initial two-year service policy shall be effective for two years from the date the OSSF is first used. For a new single family dwelling, this date is the date of sale by the builder. For an existing single family dwelling this date is the date the notice of approval is issued by the permitting authority. The owner, or owner's agent shall provide the permitting authority with a copy of the signed initial two-year service policy before the system is approved for use.

(d) Maintenance contracts. OSSFs required to have maintenance contracts are identified in §285.91(12) of this title.

(1) Contract provisions. The OSSF maintenance contract shall, at a minimum:

(A) list items that are covered by the contract;

(B) specify a time frame in which the maintenance provider or maintenance technician will visit the property in response to a complaint by the property owner regarding the operation of the system;

(C) specify the name of the maintenance provider who is responsible for fulfilling the terms of the maintenance contract;

(D) identify the frequency of routine maintenance and the frequency of the required testing and reporting; and

(E) identify who is responsible for maintaining the disinfection unit.

(2) Contract submittals. Unless the owner maintains the system, as excepted by paragraph (4) of this subsection, a copy of the signed maintenance contract shall be provided by the owner to the permitting authority 30 days before the expiration of the initial two-year service policy. For the time period after the initial two-year service policy, the owner is required to have a new maintenance contract signed and submitted to the permitting authority at least 30 days before the contract expires unless the owner maintains the system, as excepted by paragraph (4) of this subsection.

(3) Amendments or terminations.

(A) Effective September 1, 2009, if the maintenance provider discontinues the maintenance contract, the maintenance provider shall notify, in writing, the permitting authority, the manufacturer, and the owner at least 30 days before the date service will cease. Prior to September 1, 2009, if the maintenance company discontinues the maintenance contract, the maintenance company shall notify, in writing, the permitting authority, the manufacturer, and the owner at least 30 days before the date service will cease.

(B) Effective September 1, 2009, if the owner discontinues the maintenance contract, the maintenance provider shall notify, in writing, the permitting authority and the manufacturer at least 30 days before the date service will cease. Prior to September 1, 2009, if the owner discontinues the maintenance contract, the maintenance company shall notify, in writing, the permitting authority and the manufacturer at least 30 days before the date service will cease.

(C) Effective September 1, 2009, if a maintenance contract is discontinued or terminated, the owner shall contract with another maintenance provider and provide the permitting authority with a copy of the new signed maintenance contract no later than 30 days after termination, unless the owner meets the requirements of paragraph (4) of this subsection. Prior to September 1, 2009, if a maintenance contract is discontinued or terminated, the owner shall contract with another maintenance company and provide the permitting authority with a copy of the new signed maintenance contract no later than 30 days after termination, unless the owner meets the requirements of paragraph (4) of this subsection.

(4) Exceptions to maintenance contract. At the end of the initial two-year service policy, the owner of an OSSF for a single family residence shall either maintain the system personally or obtain a new maintenance contract.

(A) If the residence is sold before the end of the initial two-year service policy period, the terms of the initial service policy will apply to the new owner.

(B) An owner may not maintain an OSSF under the provisions of this section for commercial, speculative residential, or multifamily property.

(e) Testing and reporting. OSSFs that must be tested are identified in §285.91(12) of this title.

(1) Effective September 1, 2009, the maintenance provider shall test and report for each system as required in §285.91(12) of this title. Prior to September 1, 2009, the maintenance company shall test and report for each system as required in §285.91(12) of this title. The report must:

(A) include any responses to owner complaints; the results of the maintenance provider's findings as described in §285.90(3) of this title (relating to Figures) and the test results as required in §285.91(4) of this title, including procedures for the maintenance of the unit approved by the executive director; and

(B) be submitted to the permitting authority and the owner within 14 days after the date the test is performed.

(2) To provide the owner with a record of the maintenance check, the maintenance provider shall install a weather resistant tag, or some other form of weather resistant identification, on the system at the beginning of each maintenance contract. This identification shall:

(A) identify the maintenance provider;

(B) list the telephone number of the maintenance provider;

(C) specify the start date of the contract; and

(D) be either punched or indelibly marked with the date the system was checked at the time of each maintenance check, including any maintenance check in response to owner complaints.

(3) The number of required tests may be reduced to two per year for all systems having electronic monitoring and automatic telephone or radio access that will notify the maintenance provider of system or components failure and will monitor the amount of disinfection.

tion in the system. The maintenance provider shall be responsible for ensuring that the electronic monitoring and automatic telephone or radio access systems are working properly.

(4) The owner of an OSSF for a single family residence who elects to maintain their unit through the exemption described in subsection (d)(4) of this section is not subject to testing and reporting requirements.

(f) Replacement parts. The manufacturer of the installed on-site aerobic system shall make available to the homeowner all replacement parts for that aerobic system to any homeowner who elects to maintain the on-site aerobic system as identified in subsection (d)(4) of this section. The manufacturer shall also make replacement parts available to installers and maintenance providers. Failure to do so may result in removal of the manufacturer's product(s) from the list of approved systems.

(g) Inspections by authorized agents or commission. An authorized agent or the commission may inspect an on-site sewage system using aerobic treatment at any time.

*§285.8. Multiple On-Site Sewage Facility (OSSF) Systems on One Large Tract of Land.*

(a) - (c) (No change.)

(d) Executive director determination.

(1) (No change.)

(2) If the executive director determines that the systems do not meet the requirements of this section, the owner may be required to submit an application for either a permit under Chapters 205 or 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively) [~~and an authorization under Chapter 331 of this title (relating to Underground Injection Control).~~]

(e) - (f) (No change.)

(g) If, as a result of the submittal of the reports required in subsection (f) of this section, the executive director and the authorized agent determine that the systems no longer meet the requirements of this section, the owner shall either bring the systems into compliance with this section or submit an application for a permit under Chapter 205 or Chapter 305 of this title [~~and an authorization under Chapter 331 of this title.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801537

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 239-0177

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### 30 TAC §285.7

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

This repeal is proposed under THSC, §§366.001 - 366.078, concerning On-site Sewage Disposal Systems. This repeal is also proposed under the general authority granted in TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. This repeal is further proposed under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract.

This repeal implements THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

*§285.7. Maintenance Requirements.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801538

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 239-0177

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## SUBCHAPTER B. LOCAL ADMINISTRATION OF THE OSSF PROGRAM

### 30 TAC §285.13

#### STATUTORY AUTHORITY

The amendment is proposed under THSC, §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. The amendment is also proposed under the general authority granted in TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendment is further proposed under the authority granted to the commission by the Texas Legislature in TWC, §§37.001-37.015, concerning Occupational Licenses and Registrations.

The proposed amendment implements THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

*§285.13. Revocation of Authorized Agent Delegation.*

(a) (No change.)

(b) If the executive director determines that cause exists for revocation, the executive director shall:

(1) meet with the authorized agent's county judge, mayor, general manager, or chairman of the board, or other authorized individual, to discuss the report of the executive director's findings, the

authorized agent's response to the findings, and the possible revocation; and

(2) prepare a letter documenting the meeting in paragraph (1) of this subsection and forward it to the authorized agent within ten days after the meeting. and]

[(3) provide the authorized agent 60 days after the date of the letter in paragraph (2) of this subsection to allow other authorized agents to review the executive director's findings if requested by the authorized agent.]

(c) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801539

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 239-0177



## SUBCHAPTER C. COMMISSION ADMINISTRATION OF THE OSSF PROGRAM IN AREAS WHERE NO AUTHORIZED AGENT EXISTS

### 30 TAC §285.21

#### STATUTORY AUTHORITY

The amendment is proposed under THSC, §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. The amendment is also proposed under the general authority granted in TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendment is further proposed under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

The proposed amendment implements THSC, §§366.001-366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

§285.21. *Fees.*

(a) - (b) (No change.)

(c) The fees are payable when the owner, or owner's agent, applies to the executive director for an OSSF permit. The fee shall be submitted to the appropriate regional office and shall be paid by a money order or check. Payments shall be made payable to the Texas Commission on Environmental Quality. [~~Texas Natural Resource Conservation Commission.~~]

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801540

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 239-0177



## SUBCHAPTER D. PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS

### 30 TAC §§285.30, 285.32 - 285.34

#### STATUTORY AUTHORITY

These amendments are proposed under THSC, §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments are also proposed under the general authority granted in TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments are further proposed under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These proposed amendments implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

§285.30. *Site Evaluation.*

(a) (No change.)

(b) Site evaluation criteria. All aspects of the site evaluation shall be performed by either a site evaluator or a professional engineer according to this section. The information obtained during the site evaluation shall be used to determine the type and size of the OSSF.

(1) Soil analysis. The site evaluator or the professional engineer shall either drill two soil borings or excavate two backhoe pits at opposite ends of the proposed disposal area to determine the characteristics of the soil. In areas of high soil variability, the permitting authority may require additional borings or backhoe pits. The borings or backhoe pits shall either be excavated to a depth of two feet below the adopted excavation of the disposal area, or to a restrictive horizon, whichever is less. The location of all borings or backhoe pits shall be clearly indicated on the site drawing required in §285.5(a) of this title (relating to Submittal Requirements for Planning Materials).

(A) - (C) (No change.)

(2) (No change.)

(3) Surface drainage analysis.

(A) Topography. The slope of each tract of land where an OSSF will be installed, areas of poor drainage such as depressions, and areas of complex slope patterns where slopes are dissected by gullies and ravines shall be determined. All slope patterns shall be clearly indicated on the site drawing, as required in §285.5(a) of this title.

(B) Flood hazard. The 100-year floodplain for each tract of land where an OSSF will be installed shall be determined from either Federal Emergency Management Agency (FEMA) maps or from a flood study prepared by a professional engineer when FEMA

maps are not available. The 100-year flood boundaries shall be clearly indicated on the site drawing, as required in §285.5(a) of this title. The drawing(s) shall also indicate if the 100-year floodplain does not exist within the tract.

(4) Separation requirements. All features in the area where the OSSF is to be installed that could be contaminated by the OSSF or could prevent the proper operation of the system shall be identified during the site evaluation. The separation requirements are in §285.91(10) of this title. All features and separation distances shall be clearly indicated on the site drawing, as required in §285.5(a) of this title.

*§285.32. Criteria for Sewage Treatment Systems.*

(a) (No change.)

(b) Standard treatment systems.

(1) Septic tanks. A septic tank shall meet the following requirements.

(A) - (C) (No change.)

(D) Inspection or and cleanout ports. All septic tanks shall have inspection or cleanout ports located on the tank top over the inlet and outlet devices. Each inspection or cleanout port shall be offset to allow for pumping of the tank. The ports may be configured in any manner as long as the smallest dimension of the opening is at least 12 inches, and is large enough to provide for maintenance and for equipment removal. Septic tanks buried more than 12 inches below the ground surface shall have risers over the port openings. The risers shall extend from the tank surface to no more than six inches below the ground~~[-]~~. The risers shall be sealed to the tank~~[-]~~ and capped. The risers shall have inside diameters which are equal to or larger than the inspection or cleanout ports. The risers shall be fitted with removable watertight caps and prevent unauthorized access.

(E) Septic tank design and construction materials. The septic tank shall be of sturdy, water-tight construction. The tank shall be designed and constructed so that all joints, seams, component parts, and fittings prevent groundwater from entering the tank, and prevent wastewater from exiting the tank, except through designed inlet and outlet openings. Materials used shall be steel-reinforced poured-in-place concrete, steel-reinforced precast concrete, fiberglass, reinforced plastic polyethylene, or other materials approved by the executive director. Metal septic tanks are prohibited. The septic tank shall be structurally designed to resist buckling from internal hydraulic loading and exterior loading caused by earth fill and additional surface loads. Tanks exhibiting deflections, leaks, or structural defects shall not be used. Sweating at construction joints is acceptable on concrete tanks.

(i) Precast concrete tanks. In addition to the general requirements in subparagraph (E) of this paragraph, precast concrete tanks shall conform to requirements in the Materials and Manufacture Section and the Structural Design Requirements Section of American Society for Testing and Materials (ASTM) Designation: C 1227, Standard Specification for Precast Concrete Septic Tanks (2000) or under any other standards approved by the executive director. A professional engineer shall verify in writing that the manufacturer is in compliance with ASTM Standard C 1227. This verification shall be submitted to the permitting authority from the tank manufacturer. If this verification has not been previously submitted or accepted by the permitting authority, a new verification shall be completed within 30 days of the effective date of this section.

(ii) - (iv) (No change.)

(F) Installation of tanks. For gravity disposal systems, septic tanks must be installed with at least a 12 inch drop in elevation from the bottom of the outlet pipe to the bottom of the disposal

area. A minimum of four inches of sand, sandy loam, clay loam, or pea gravel, free of rock larger than 1/2 inch in diameter, shall be placed under and around all tanks, except poured-in-place concrete tanks. Unless otherwise approved by the permitting authority, tank excavations shall be left open until they have been inspected by the permitting authority. Tank excavations must be backfilled with soil or pea gravel~~[-]~~ that is free of rock larger than 1/2 inch in diameter. Class IV soils and gravel larger than one-half inch in diameter are not acceptable for use as backfill material. If the top of a septic tank extends above the ground surface, soil may be mounded over the tank to maintain slope to the drainfield.

(G) (No change.)

(H) Leak Testing. At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the tank may be required.

(2) (No change.)

(c) Proprietary treatment systems. This subsection does not apply to proprietary septic tanks described in subsection (b)(1) of this section.

(1) Tank sizing. Proprietary treatment systems must be designed using Table II, located in Figure: 30 TAC §285.91(2) of this title (relating to Septic Tank and Aerobic Treatment Unit Sizing).

(2) ~~[(4)]~~ Installation. Proprietary treatment systems shall be installed according to this subchapter. If the manufacturer has installation specifications that are more stringent than given in this subchapter, the manufacturer shall submit these specifications to the executive director for review. If approved by the executive director, the treatment systems may be installed according to these more stringent specifications. Any subsequent changes to these manufacturer's installation specifications must be approved by the executive director before installation. Tank excavations shall be backfilled according to the backfill provisions in subsection (b)(1)(F) of this section.

(3) ~~[(2)]~~ System maintenance. Ongoing maintenance contracts are required for all proprietary treatment systems. The maintenance contract shall satisfy §285.7(d) ~~[(285.7(e))]~~ of this title (relating to Maintenance Requirements).

(4) ~~[(3)]~~ Electrical wiring. Electrical wiring for proprietary systems shall be according to §285.34(c) of this title (relating to Other Requirements).

(5) ~~[(4)]~~ Approval of proprietary treatment systems. Proprietary treatment systems must be approved by the executive director prior to their installation and use. Approval of proprietary treatment systems shall follow the procedures found in this section. After the effective date of these rules, only systems tested according to subparagraph (A) or (B) of this paragraph will be placed on the list of approved systems. The list may be obtained from the executive director. All systems on the list of approved systems on the effective date of these rules shall continue to be listed subject to the retesting requirements in paragraph (6) ~~[(5)]~~ of this subsection. In addition, all proprietary treatment systems undergoing testing under this paragraph on the effective date of these rules shall be considered for inclusion on the list of approved systems.

(A) Treatment systems that have been tested by and are currently listed by NSF International as Class I systems under NSF Standard 40 (1999), or have been tested and certified as Class I systems according to NSF Standard 40 (1999) by an American National Standard Institute (ANSI) accredited testing institution, or under any other standards approved by the executive director, shall be considered for approval by the executive director. All systems approved by the



executive director on the effective date of these rules shall continue to be listed on the list of approved systems, subject to retesting under the requirements of NSF Standard 40 (1999) and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director. The manufacturers of proprietary treatment systems and the accredited certification institution must comply with all the provisions of NSF Standard 40 (1999) and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director.

(i) Proprietary units under this section have been approved to treat flows equal to or less than their rated capacity and with an influent wastewater strength ranging from a 30-day average Carbonaceous Biochemical Oxygen Demand (CBOD) concentration between 100 milligrams per liter (mg/l) and 300 mg/l and a 30-day average TSS concentration between 100 mg/l and 350 mg/l.

(ii) Proprietary units may be used as components in an overall treatment system treating influent stronger than the ranges listed in this section. However, the overall treatment system will be considered a non-standard treatment system and shall meet the requirements set forth in subsection (d) of this section.

(B) Treatment systems that will not be accepted for testing because of system size or type by NSF International, or ANSI accredited third party testing institutions, and are not approved systems at the time of the effective date of these rules, may only be approved in the following manner.

(i) The proprietary systems shall be tested by an independent third party for two years and all the supporting data from the test shall be submitted to the executive director for review and approval, or denial before the system is marketed for sale in the state.

(ii) The independent third party shall obtain a temporary authorization from the executive director before testing. The temporary authorization shall contain the following:

(I) the number of systems to be tested (between 20 and 50);

(II) the location of the test sites (the test sites must be typical of the sites where the system will be used if final authorization is granted);

(III) provisions as to how the proprietary system will be installed and maintained;

(IV) the testing protocol for collecting and analyzing samples from the system;

(V) the equipment monitoring procedures, if applicable; and

(VI) provisions for recording data and data retention necessary to evaluate the performance as well as the effect of the proprietary system on public health, groundwater, and surface waters.

(iii) Permitting authorities may issue authorizations to construct upon receipt of the temporary authorization. The owner must be advised, in writing, that the system is temporarily approved for testing. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense. A system installed under this subparagraph is the responsibility of the manufacturer until the system has obtained final authorization by the executive director according to this subparagraph.

(iv) Upon completion of the two-year test period, the executive director shall require the independent third party to submit a detailed report on the performance of the system. After evaluating

the report, the executive director may issue conditional approval of the system, or may deny use of the system.

(I) The conditional approval will authorize installations only in areas similar to the area in which the system was tested.

(II) The conditional approval shall be for a specified performance and evaluation (monitoring) period, not to exceed an additional five years. The system must be monitored according to a plan approved by the executive director. Approval or disapproval of these systems will be based on their performance during the monitoring period. Failure of one or more of the installed systems may be cause for disapproval of the proprietary system. The owner must be advised, in writing, that the system is conditionally approved.

(III) If the executive director denies use of the system after the two-year period, the executive director shall provide, in writing, the reasons for denying the use of the system. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense.

(v) Upon successful completion of the monitoring period, the monitoring requirements may be lifted by the executive director, the notice of approval may be made permanent for the test systems and the systems will be deemed suitable for use in conditions similar to areas in which the systems were tested and monitored.

(6) ~~[(5)]~~ System reviews. The manufacturers of systems that are approved for listing under this section ~~or included under §285.33(e) of this title (relating to Criteria for Effluent Disposal Systems);~~ shall ensure that their systems are reviewed every seven years, or as often as deemed necessary by the executive director, starting from the date the system was originally added to the executive director's approved list. All reviews shall be completed before the end of the seven-year period. The manufacturer of any system that was approved by the executive director more than seven years before the effective date of these rules, will be given 365 days from the effective date of these rules to complete a review.

(A) The review shall be performed by either an ANSI accredited institution according to the reevaluation requirements in NSF Standard 40 (1999) and Certification Policies for Wastewater Treatment Devices (1997), or under any standards approved by the executive director, or by an independent third party for those systems not tested under NSF Standard 40.

(B) If the system being reviewed was not approved under the requirements of NSF Standard 40, the independent third party shall evaluate between 20 and 50 systems in the state that have been in operation for at least two years and are the same design as originally approved.

(C) The review under this subsection shall include an evaluation of:

(i) the short-term and long-term effectiveness of the system;

(ii) the structural integrity of the system;

(iii) the maintenance of the system;

(iv) owner access to maintenance support;

(v) any impacts that system failures may have had on the environment; and

(vi) an evaluation of the effectiveness of the manufacturer's installer training program.

(D) Any system that is not approved by the executive director as a result of the review will be removed from the list of approved systems. The manufacturer shall ensure that maintenance support remains available for the existing systems.

(d) - (e) (No change.)

(f) Other Design Considerations.

(1) Restaurant/food establishment sewage. When designing for restaurants, food service establishments, or similar activities, the minimum design strength value shall be 1,200 mg/l Biochemical Oxygen Demand (BOD) after a properly sized grease trap/interceptor. It is the responsibility of the designer to properly design a system which reduces the wastewater strength to 140 mg/l BOD prior to disposal unless secondary treatment levels are required.

(2) Other high-strength sewage. For situations where sewage as defined in this chapter is expected to be a higher strength than residential sewage, it is the responsibility of the professional designer to justify sewage design strength estimations and properly design a system that reduces the wastewater strength to 140 mg/l BOD prior to disposal unless secondary treatment levels are required. Residential sewage is sewage that has a strength of less than 300 mg/l BOD.

(3) Flow equalization. The designer should consider whether flow-equalization will be needed for the treatment system to function properly.

#### *§285.33. Criteria for Effluent Disposal Systems.*

(a) General requirements.

(1) - (4) (No change.)

(5) Except for drip irrigation tubing, pipe under internal pressure within any part of an on-site sewage facility system shall meet the minimum requirements of ASTM Schedule 40.

(b) - (c) (No change.)

(d) Nonstandard disposal systems. All disposal systems not described or defined in subsections (b) and (c) of this section are nonstandard disposal systems. Planning materials for nonstandard disposal systems must be developed by a professional engineer or professional sanitarian using basic engineering and scientific principles. The planning materials for paragraphs (1) - (5) of this subsection shall be submitted to the permitting authority and the permitting authority shall review and either approve or disapprove them on a case-by-case basis according to §285.5 of this title (relating to Submittal Requirements for Planning Materials). Electrical wiring for nonstandard disposal systems shall be installed according to §285.34(c) of this title (relating to Other Requirements). Upon approval of the planning materials, an authorization to construct will be issued by the permitting authority. Approval for a nonstandard disposal system is limited to the specific system described in the planning materials for the specific location. The systems identified in paragraphs (1) - (5) of this subsection must meet these requirements, in addition to the requirements identified for each specific system in this section.

(1) (No change.)

(2) Surface application systems. Surface application systems include those systems that spray treated effluent onto the ground.

(A) - (C) (No change.)

(D) Effluent disinfection. Treated effluent must be disinfected before surface application. The effluent quality in the pump tank must meet the minimum required test results specified in §285.91(4) of this title. Approved disinfection methods shall include

chlorination, ozonation, ultraviolet radiation, or other method approved by the executive director. Tablet or other dry chlorinators shall use calcium hypochlorite properly labeled for wastewater disinfection. The effectiveness of the disinfection procedure will be established by monitoring either the fecal coliform count or total chlorine residual from representative effluent grab samples as directed in the testing and reporting schedule. The frequency of testing, the type of tests, and the required results are shown in §285.91(4) of this title.

(E) - (F) (No change.)

(G) Uniform application of effluent. Distribution pipes, sprinklers, and other application methods or devices must provide uniform distribution of treated effluent. The application rate must be adjusted so that there is no runoff.

(i) - (iii) (No change.)

(iv) Distribution piping. Distribution piping shall be installed below the ground surface and hose bibs shall not be connected to the distribution piping ~~[outside the pump tank]~~. An unthreaded sampling port shall be provided in the treated effluent line in the pump tank.

(v) Color coding of distribution system. ~~All [Effective 365 days after the effective date of these rules, all]~~ new distribution piping, fittings, valve box covers, and sprinkler tops shall be permanently colored purple to identify the system as a reclaimed water system according to Chapter 210 of this title (relating to Use of Reclaimed Water).

(3) Mound drainfields. A mound drainfield is an absorptive drainfield constructed above the native soil surface. The mound consists of a distribution area installed within fill material placed on the native soil surface. The required area of the fill material is a function of the texture of the native soil surface, the depth of the native soil, basal area sizing considerations, and sideslope requirements. A description of mound construction, as well as construction requirements not addressed in this section can be found in the *North Carolina State University Sea Grant College Publication UNC-SG-82-04* (1982).

(A) - (E) (No change.)

(F) The basal area is defined as the interface area between the native soil surface and the fill material. The formula  $A(b) = Q/R(a)$  must be used for calculating the minimum required basal area of the mound where:  $A(b)$  = minimum required basal absorptive area in square feet;  $Q$  = design wastewater usage rate in gallons per day;  $R(a)$  = application rate of the native soil surface in gallons per square foot per day.

~~[Figure: 30 TAC §285.33(d)(3)(F)]~~

(i) - (ii) (No change.)

(G) - (J) (No change.)

(4) - (6) (No change.)

#### *§285.34. Other Requirements.*

(a) - (c) (No change.)

(d) Grease interceptors. Grease interceptors shall be used on kitchen waste-lines from institutions, hotels, restaurants, schools with lunchrooms, and other buildings that may discharge large amounts of greases and oils to the OSSF. Grease interceptors shall be structurally equivalent to, and backfilled according to, the requirements established for septic tanks under §285.32(b)(1)(D) - (F) of this title. The interceptor shall be installed near the plumbing fixture that discharges greasy wastewater and shall be easily accessible for cleaning. Grease interceptors shall be cleaned out periodically to prevent the discharge of grease to the disposal system. Grease interceptors shall be properly sized and installed according to the requirements of the 2000 edition

of the Uniform Plumbing Code, the 1980 EPA Design Manual: On-site Wastewater Treatment and Disposal Systems, or other prevailing code[; or under any other standards approved by the executive director].

(e) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801541

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 239-0177



## SUBCHAPTER F. LICENSING AND REGISTRATION REQUIREMENTS FOR INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, SITE EVALUATORS, MAINTENANCE PROVIDERS AND MAINTENANCE TECHNICIANS

### 30 TAC §§285.50, 285.60 - 285.65

#### STATUTORY AUTHORITY

These amendments are proposed under THSC, §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments are also proposed under the general authority granted in TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments are further proposed under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These proposed amendments implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

#### §285.50. General Requirements.

(a) The procedures for issuing licenses and registrations for on-site sewage facilities (OSSF) installers, designated representatives, apprentices, ~~and~~ site evaluators, maintenance providers, and maintenance technicians are in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(b) - (d) (No change.)

(e) Any [Effective September 1, 2002, any] individual, other than a professional engineer, who performs the duties of a site evaluator under §285.60 of this title (relating to Duties and Responsibilities of Site Evaluators) shall possess a current site evaluator license. An individual possessing a current professional engineer license is not required to possess a site evaluator license.

(f) (No change.)

(g) Any individual who acts in any capacity for a permitting authority shall not, within that permitting authority's area of jurisdiction:

(1) - (2) (No change.)

(3) work for an OSSF maintenance provider or maintenance technician ~~[company]~~;

(4) - (5) (No change.)

(h) - (i) (No change.)

(j) Any individual who ~~[or company that]~~ performs maintenance of aerobic OSSFs under §285.64 of this title (relating to Duties and Responsibilities of Maintenance Providers and Maintenance Technicians ~~[Companies]~~) shall possess a current maintenance provider license or maintenance technician registration with the commission.

#### §285.60. Duties and Responsibilities of Site Evaluators.

A site evaluator shall:

(1) - (3) (No change.)

(4) maintain a current ~~[Installer II license, designated representative license,]~~ professional engineer license, professional sanitation license, professional geoscientist license or [a] certified professional soil scientist certificate, in addition to the site evaluator license if the site evaluator license was granted on the basis of holding one of the licenses listed in this section;

(5) - (6) (No change.)

#### §285.61. Duties and Responsibilities of Installers.

An installer shall:

(1) - (13) (No change.)

(14) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change; and [perform maintenance, keep a maintenance record, and submit maintenance reports to the permitting authority and the owner for an OSSF for which the installer has contracted to provide maintenance or, when requested by the homeowner of an aerobic OSSF, train the owner according to §285.7 of this title (relating to Maintenance Requirements);]

(15) make all OSSF repairs in accordance with the approved planning materials and this chapter.

~~[(15) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change; and]~~

~~[(16) when requested by the homeowner, make replacement parts available to all homeowners who have been trained to maintain their own aerobic system.]~~

#### §285.62. Duties and Responsibilities of Designated Representatives.

A designated representative shall:

(1) - (18) (No change.)

(19) while employed by, appointed to, or contracted by the authorized agent, refrain from performing any of the following activities within the authorized agent's area of jurisdiction:

(A) - (B) (No change.)

(C) working for an OSSF maintenance provider ~~[company]~~;

(D) - (E) (No change.)

(20) verify the existence of a maintenance contract between an owner and the maintenance provider [company] according to §285.7(d) [§285.7(e)] of this title (relating to Maintenance Requirements); [and]

(21) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change; and[-]

(22) receive written permission from the designated representative's employer if the designated representative desires to perform any OSSF-related activities for compensation outside of the authorized agent's regulatory jurisdiction to be kept on file in the designated representative's office.

*§285.63. Duties and Responsibilities of Registered Apprentices.*

(a) An apprentice shall:

(1) possess a current registration from the executive director;

(2) [(4)] represent his supervising installer during construction at the site;

(3) [(2)] perform services associated with on-site sewage facility (OSSF) construction under the direct supervision and direction of the installer on-site or be in direct communication with the installer;

(4) [(3)] refrain from receiving compensation for an OSSF installation from anyone except the supervising installer; and

(5) [(4)] maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

(b) An apprentice shall not act as, advertise, or offer to perform services of [as,] an installer. An apprentice may not perform any services associated with OSSF construction except under the direct supervision of an installer holding a current license or according to the supervising installer's express [expressed] directions.

*§285.64. Duties and Responsibilities of Maintenance Providers and Maintenance Technicians [Companies].*

(a) A maintenance provider [company] shall:

(1) possess a current license [registration] from the executive director [and a current certification from the manufacturer];

[(2) employ at least one individual who is licensed as an Installer II and who is certified by the manufacturer of the on-site sewage facility (OSSF) system as qualified to provide maintenance services;]

(2) [(3)] ensure maintenance of accurate records of [permitting,] fees, inspections, and reports;

(3) [(4)] satisfy the requirements of the maintenance contract between the homeowner of the OSSF system and the maintenance provider [company] according to §285.7[(a)] of this title (relating to Maintenance Requirements);

(4) [(5)] maintain a current address and phone number with the executive director and submit any change in address or phone number to the executive director in writing within 30 days after the date of the change; and

(5) [(6)] perform maintenance on each OSSF system under executed contract, keep a maintenance record, and submit maintenance reports to the permitting authority and the owner of the OSSF for whom the installer has contracted to provide maintenance, according to §285.7 of this title[; and]

[(7) provide maintenance training to any homeowner of an aerobic on-site sewage system when requested, according to §285.7 of this title.]

(b) A maintenance technician shall:

(1) possess a current registration from the executive director;

(2) represent his supervising maintenance provider while performing maintenance on an OSSF;

(3) perform services associated with OSSF maintenance under the direct supervision and direction of the maintenance provider on-site or be in direct communication with the maintenance provider;

(4) refrain from receiving compensation for OSSF maintenance from anyone except the supervising maintenance provider;

(5) maintain a current address and phone number with the executive director and submit any change in address or phone number to the executive director in writing within 30 days after the date of the change; and

(6) not advertise or otherwise portray themselves as a maintenance provider.

*§285.65. Suspension or Revocation of License or Registration.*

(a) Suspension. In addition to the grounds [items] listed in Texas Water Code, §7.303 [§30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation)], the commission [executive director] may suspend an OSSF installer's license, a designated representative's license, a site evaluator's license, an apprentice's registration, a maintenance provider's license, or a maintenance technician's registration for violation of duties and responsibilities listed in this subchapter, as recommended by the executive director. Additional grounds for suspension of these [the following] licenses and registrations include (and are not limited to) [for] the following reasons.

(1) A maintenance provider's [An on-site sewage facility (OSSF) installer's] license can be suspended for:

(A) (No change.)

(B) failing to properly submit maintenance reports required by §285.7(d) of this title (relating to Maintenance Requirements) for an individual OSSF in a 12-month period; or

(C) failing to properly submit four or more required OSSF maintenance reports over any two-year period[;]

[(D) failing to provide proper maintenance training to an owner of an aerobic OSSF when requested by the owner;]

[(E) failing to provide proper maintenance training to an owner of an aerobic OSSF with a commission-approved course; or]

[(F) failure to make replacement parts available to all homeowners who have been trained to maintain their own aerobic system.]

(2) A designated representative's license can be suspended for:

(A) - (B) (No change.)

(C) failing to enforce the requirements of an order, ordinance, or resolution of an authorized agent[;]

(b) Revocation. In addition to the grounds [items] listed in Texas Water Code, §7.303 [§30.33 of this title,] the commission [executive director] may revoke an OSSF installer's license, a designated representative's license, a site evaluator's license, an apprentice's registration, [or] a maintenance provider's license, or a maintenance technician's registration.

nician's registration for violation of duties and responsibilities listed in this subchapter, as recommended by the executive director. Additional grounds for revocation of these licenses and registrations include (and are not limited to) [company's registration for] the following reasons.

(1) An OSSF installer's license can be revoked for:

(A) constructing, or otherwise facilitating the construction of, an OSSF that is not in compliance with this chapter; or

(B) allowing, or beginning, the construction of an OSSF without a permit when a permit is required.[]

[(C) failing to provide proper maintenance training to an owner of an aerobic OSSF when requested by the owner;]

[(D) failing to provide proper maintenance training to an owner of an aerobic OSSF in a timely manner; or]

[(E) failing to provide proper maintenance training to an owner of an aerobic OSSF with a commission-approved course.]

(2) A designated representative's license can be revoked for:

(A) (No change.)

(B) practicing as an apprentice, maintenance provider, maintenance technician, site evaluator or an installer in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent; or

(C) working for a maintenance provider or maintenance company in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent.

(3) A site evaluator's license can be revoked for failing to maintain a current [~~Installer H license, designated representative license,~~] professional engineer license, professional sanitarian license, professional geoscientist license, or a certified professional soil scientist certificate.

(4) (No change.)

(5) A maintenance provider's license or maintenance company's registration can be revoked for:

(A) - (B) (No change.)

(6) A maintenance technician's registration can be revoked for:

(A) acting as, advertising, or otherwise portraying themselves as a maintenance provider, or performing duties and responsibilities of an maintenance provider without the direct supervision of, or direct communication with, the supervising maintenance provider; or

(B) receiving compensation for OSSF maintenance from someone other than the supervising maintenance provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801542

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 239-0177

## SUBCHAPTER G. OSSF ENFORCEMENT

### 30 TAC §285.70, §285.71

#### STATUTORY AUTHORITY

These amendments are proposed under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments are also proposed under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments are further proposed under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These proposed amendments implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

#### §285.70. Duties of Owners With Malfunctioning OSSFs.

(a) If the executive director or the authorized agent determines that an on-site sewage facility (OSSF) is malfunctioning, as defined in §285.2 of this title (relating to Definitions), the owner shall bring the OSSF into compliance by repairing the malfunction. The owner shall initiate repair of a malfunctioning OSSF no later than:

(1) the 30th day after the date which the owner is notified by the executive director or the authorized agent of the malfunctioning system, if the owner has not been notified of the malfunctioning system during the previous 12 months;

(2) the 20th day after the date on which the owner is notified by the executive director or the authorized agent of the malfunctioning system, if the owner has been notified of the malfunctioning system at least once during the previous 12 months; or

(3) the 10th day after the date on which the owner is notified by the executive director or the authorized agent of the malfunctioning system, if the owner has been notified of the malfunctioning system at least twice during the previous 12 months.

(b) If aerobic treatment system maintenance is provided by the homeowner, as described in §285.7(d)(4) [~~With the exception of §285.7(e)(4)~~] of this title (relating to Maintenance Requirements), an authorized agent or the commission may require the homeowner to contract for maintenance of the [~~condition the permit or the approval of a permit for an~~] on-site sewage disposal system using aerobic treatment for a single-family residence [~~on the owner's contracting with a maintenance company for the maintenance of the system~~] if the system is located in a county of at least 40,000 persons and:

(1) the authorized agent or commission determines that the owner has violated this chapter or a rule adopted or order or permit issued under this chapter and the owner fails to correct the violation no later than the 10th day after the date of receipt of notification by the permitting authority; or [~~system is a nuisance or has failed a periodic inspection under §285.7(d)(4) of this title;~~]

(2) the owner commits another violation before the third anniversary of the initial violation of this chapter or rule adopted under the Texas Health and Safety Code, Chapter 366.

~~{(2) the owner fails to timely inspect the system or submit a report on the inspection as required by §285.7(d) of this title, if applicable, for three consecutive intervals; or}~~

~~{(3) the owner is notified at least three times during a 12-month period that the system is malfunctioning.}~~

(c) If, under this section, ~~[\$285.71(d)(1) of this title (relating to Authorized Agent Enforcement of OSSFs);]~~ an authorized agent or the commission requires ~~[conditions approval of a permit for an on-site sewage disposal system using aerobic treatment on]~~ the system's owner ~~to contract [contracting]~~ for the maintenance of the system, the order, resolution, or rule may require the maintenance provider ~~[company]~~ to:

- (1) inspect the system at specified intervals;
- (2) submit a report on each inspection to the authorized agent or commission; and
- (3) provide a copy of each report submitted to the system's owner.

*§285.71. Authorized Agent Enforcement of OSSFs.*

(a) Complaints. The authorized agent shall investigate a complaint regarding an on-site sewage facility (OSSF) within 30 days after receipt of the complaint, notify the complainant of the findings, and take appropriate and timely action on all documented violations. Appropriate action may include criminal or civil enforcement action as necessary under the authority of their order, ordinance, or resolution, the Texas Water Code, Chapters 7 and 26, or the Texas Health and Safety Code, Chapters 341 and 366. This may include complaints against:

- (1) registered apprentices, maintenance technicians, [and] licensed installers, site evaluators, maintenance providers, and designated representatives;
- (2) individuals performing the duties listed above not holding a current commission license or registration or failing to maintain a license or registration, including professional engineers and professional sanitarians; [for aerobic system maintenance as an apprentice, installer, designated representative, site evaluator, or a professional engineer who is performing site evaluations without a current registration or license;]
- (3) owners in violation of this chapter or the authorized agent's order, ordinance, or resolution; or
- (4) owners of malfunctioning OSSFs on the owners' property.

(b) Conviction or court judgment under subsection (a)(1) and (2) of this section. Upon conviction or court judgment, the authorized agent shall send a copy of the conviction or court judgment to the executive director.

(c) Referral of complaints under subsection (a)(1) and (2) of this section. If there are unusual circumstances involved, or if the authorized agent is unable to take enforcement action, the authorized agent may refer complaints to the executive director in writing at any time after a documented investigation of the complaint has been completed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.  
TRD-200801543

Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: May 4, 2008  
For further information, please call: (512) 239-0177

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**SUBCHAPTER I. APPENDICES**

**30 TAC §285.90, §285.91**

**STATUTORY AUTHORITY**

These amendments are proposed under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments are also proposed under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments are further proposed under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These proposed amendments implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

*§285.90. Figures.*

The following figures are necessary for the proper location, planning, construction, and installation of an on-site sewage facility (OSSF).

(1) Figure 1. Maximum Application Rates for Surface Application of Treated Effluent in Texas.  
Figure: 30 TAC §285.90(1) (No change.)

(2) Figure 2. Model ~~[Deed and]~~ Affidavit to the Public [Language].  
Figure: 30 TAC §285.90(2)  
~~[Figure: 30 TAC §285.90(2)]~~

(3) Figure 3. Sample Testing and Reporting Record.  
Figure: 30 TAC §285.90(3)  
~~[Figure: 30 TAC §285.90(3)]~~

(4) Figure 4. Typical Drainfields - Sectional View.  
Figure: 30 TAC §285.90(4) (No change.)

(5) Figure 5. Typical Drainfields.  
Figure: 30 TAC §285.90(5) (No change.)

(6) Figure 6. Two Compartment Septic Tank.  
Figure: 30 TAC §285.90(6) (No change.)

(7) Figure 7. Two Septic Tanks in Series.  
Figure: 30 TAC §285.90(7) (No change.)

(8) Figure 8. Intermittent Sand Filters.  
Figure: 30 TAC §285.90(8) (No change.)

(9) Figure 9. Intermittent Sand Filter Underdrain and Pumpwell.  
Figure: 30 TAC §285.90(9) (No change.)

*§285.91. Tables.*

The following tables are necessary for the proper location, planning, construction, and installation of an OSSF.

(1) Table I. Effluent Loading Requirements Based on Soil Classification.

Figure: 30 TAC §285.91(1) (No change.)

(2) Table II. Septic Tank and Aerobic Treatment Unit Sizing [Minimum Liquid Capacity].

Figure: 30 TAC §285.91(2)

[Figure: 30 TAC §285.91(2)]

(3) Table III. Wastewater Usage Rate.

Figure: 30 TAC §285.91(3)

[Figure: 30 TAC §285.91(3)]

(4) Table IV. Required Testing and Reporting.

Figure: 30 TAC §285.91(4) (No change.)

(5) Table V. Criteria for Standard Subsurface Absorption Systems.

Figure: 30 TAC §285.91(5) (No change.)

(6) Table VI. USDA Soil Textural Classifications.

Figure: 30 TAC §285.91(6) (No change.)

(7) Table VII. Yearly Average Net Evaporation (Evaporation-Rainfall).

Figure: 30 TAC §285.91(7) (No change.)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less).

Figure: 30 TAC §285.91(8) (No change.)

(9) Table IX. OSSF System Designation.

Figure: 30 TAC §285.91(9) (No change.)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

Figure: 30 TAC §285.91(10)

[Figure: 30 TAC §285.91(10)]

(11) Table XI. Intermittent Sand Filter Media Specifications (ASTM C-33).

Figure: 30 TAC §285.91(11) (No change.)

(12) Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.

Figure: 30 TAC §285.91(12)

[Figure: 30 TAC §285.91(12)]

(13) Table XIII. Disposal and Treatment Selection Criteria.

Figure: 30 TAC §285.91(13) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801544

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 239-0177



## CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

### SUBCHAPTER A. PURPOSE AND GENERAL INFORMATION

#### 30 TAC §328.4

The Texas Commission on Environmental Quality (commission) proposes an amendment to §328.4.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2541, 80th Legislature, Regular Session, 2007 requires the commission to establish rules regarding the size, content, and fire safety features for non-permitted and non-registered municipal solid waste (MSW) recycling facilities that store combustible materials to produce compost or mulch and are located in certain counties that have sole source aquifers and that have a population of more than 1.3 million. This bill also requires more stringent standards for facilities located over sole source aquifers. At present, Bexar County is the only county that satisfies the population and aquifer qualifiers contained within HB 2541. The effective date of the legislation was September 1, 2007. The bill further stipulates that rules implementing the requirements for these MSW recycling facilities must not become effective until the first anniversary of the adoption date of the new rules.

#### SECTION DISCUSSION

The commission proposes administrative changes throughout the proposed rule to insert and update cross-references.

The commission proposes to update cross-references in §328.4(a), (c), (d), and (f) to update incorrect chapter citations due to reorganization that occurred during a previous rulemaking.

The commission proposes to amend §328.4(a) to include cross-references to 30 TAC Chapter 330, Municipal Solid Waste and Chapter 332, Composting, to mirror the references contained in these chapters. These changes are administrative, intended to improve the ease of use and readability of this section.

The commission proposes §328.4(g) to implement the requirements of Texas Health and Safety Code (THSC), §361.1191, Regulation of Certain Recycling Facilities in Certain Counties, as established by HB 2541 for Bexar County. This statutory change took effect September 1, 2007 and applies only to MSW recycling facilities that are not required to have permits or registrations; that store combustible materials to produce mulch or compost; and that are located in certain counties. These counties must have a population of more than 1.3 million and include areas designated as recharge or transition zones of an aquifer as defined under the commission's Edwards Aquifer Protection Program that is the sole or principle source of drinking water for an area under Section 1424(e), Safe Drinking Water Act of 1974 (42 United States Code, Section 300h-3(e)) and is designated by the United States Environmental Protection Agency (EPA) as the Edwards Underground Reservoir under 40 Federal Register 58344. The referenced EPA designation, published December 16, 1975, was only for areas found within Medina, Bexar, and Comal Counties. Of the three counties designated in 1975, only Bexar County has a present population greater than 1.3 million persons and is the only county presently affected by the new legislation. Travis County is not potentially affected by this legislation because the Austin-Area Edwards Aquifer was designated as a sole source of drinking water by the EPA at a later date, in 53 FR 20897 on June 7, 1988. As a result, Travis County is not within the 1975 designation. There are no applicable existing federal regulations. Municipalities, Bexar County, state and federal agencies, and persons affiliated with an MSW dis-

positional permit who operate mulch and compost facilities located within Bexar County and were previously exempt from storage and processing limitations, recordkeeping, and reporting will now be subject to these requirements.

The commission proposes §328.4(g)(1) to establish an annual storage time limit applicable to all material at the facility as required by HB 2541. At least 90% of an equivalent amount of material received during each year must leave the facility annually. The material removal requirement is intended to prevent sham recycling operations where profits are made primarily from money received on the incoming material in conjunction with an overall gross accumulation of material. The 90% removal requirement is intended to provide flexibility in facility operations to allow for slight seasonal or annual variations in the demand of recycled material. The 90% removal requirement could be documented by the owner or operator through such means as sales receipts of material purchased from the facility or shipping invoices for material leaving the facility.

The commission proposes §328.4(g)(2) to establish a maximum volume of combustible material to be stored at the facility as required by HB 2541. The maximum storage volume limitation will be established by the most current notice of intent to operate the facility. The storage limitation will apply to both processed and unprocessed combustible material.

The commission proposes §328.4(g)(3) to require combustible material stored by the facility to produce mulch or compost be ground to a particle size not to exceed 6 inches in any dimension no later than 90 days after receipt. While processed material is also combustible, unprocessed brush at mulch and compost sites represents the most immediate fire risk. Ground material is more likely to smoulder in a confined manner and can more easily be doused with water or cut away from a pile to prevent further spread of the fire. The commission proposes to allow an owner or operator to request executive director approval for additional time to grind combustible materials up to 180 days after receipt of the material, if conditions warrant. There may be limited circumstances, such as the initial startup of a facility, where it is not practical to grind materials within 90 days of receipt. This would allow the executive director to grant an extension to the processing time limit.

The commission proposes §328.4(g)(4) to establish individual pile size limits for combustible materials as required by HB 2541. The commission proposes that each pile shall not exceed 25 feet in height; that unprocessed combustible material shall not cover an area greater than 50,000 square feet at the facility, with no single pile exceeding 8,000 square feet; and that a pile of processed combustible material shall not cover an area greater than 25,000 square feet. The proposed height requirement for all piles reflects commission guidance on cotton gin trash and is recommended in Chapter 19, Section 1908 of the International Fire Code. The proposed maximum individual pile size area for unprocessed combustible material would limit the amount of material that could be engulfed in flames and is consistent with the requirements of §328.61, Design Requirements for Scrap Tire Storage Site. The 25,000 square feet limitation for processed material is consistent with Chapter 19, Section 1908 of the International Fire Code, except that the footprint of the pile was adjusted downward since internal pile temperature monitoring, automatic sprinkler systems, and portable fire extinguisher requirements of the code are not included in this proposal. The maximum individual pile size area for processed material would

limit the impact of a smouldering fire to a manageable pile size and reflects commission guidance on cotton gin trash.

The commission proposes §328.4(g)(5) to establish a limit on the number of piles of combustible materials at a facility, as required by HB 2541. The commission proposes that the number of piles shall not exceed the maximum number specified by the operator in the notice of intent to operate the facility.

The commission proposes §328.4(g)(6) to require fire lanes between piles of combustible material as required by HB 2541. The commission proposes a minimum separation of 40 feet from piles of unprocessed combustible materials and 20 feet between piles of processed materials. The proposed rules would allow narrower fire lanes adjacent to piles of processed materials since ground material is considered to represent a lesser fire risk than unprocessed brush. The commission proposes to require an all-weather road which encircles the area used for processing and storage of combustible material. This all-weather road must have minimum 25-foot turning radii, be capable of accommodating firefighting vehicles during wet weather, and meet applicable local requirements and specifications. The commission further proposes to require that there be open space between buildings and piles that be kept open at all times and maintained free of combustible material, rubbish, equipment, or other materials. The commission proposes to allow this distance to be increased as necessary to protect human health and safety upon coordination with the local fire marshal.

The commission proposes §328.4(g)(7) to require at least a 50-foot buffer zone between the facility boundary and areas receiving, processing, or storing material. This provision is intended to implement HB 2541 by prohibiting these activities from being conducted within 50 feet of a residence, school, or church. This proposal is consistent with the set back distances required by §332.8, Air Quality Requirements, applicable to mulch and compost facilities.

The commission proposes §328.4(g)(8) to establish requirements for a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. HB 2541 requires more stringent standards for facilities located over the recharge or transition zone of the Edwards Aquifer. The commission proposes to require this plan to be consistent with the requirements of 30 TAC §213.5(b) concerning the Edwards Aquifer.

The commission proposes §328.4(g)(9) to require that by the effective date of this subsection for existing facilities or at least 90 days prior to commencing new operations, the owner or operator must file a notice of intent in accordance with §328.5(b) that also includes provisions to demonstrate compliance with this subsection. This paragraph also requires that a revised notice of intent must be filed with the executive director before a facility exceeds the maximum amount of material specified in the current notice of intent. This provision makes it clear what actions are required and therefore will improve the inspection and enforcement process.

The commission proposes §328.4(g)(10) to require that the owner or operator of a facility subject to the requirements of this subsection maintain all records necessary to demonstrate compliance with this subsection. This provision makes it clear that records are required and therefore will improve the inspection and enforcement process.

The commission proposes §328.4(g)(11) to state that failure to operate and maintain a facility as proposed in the current notice



of intent for the facility is a violation of this chapter. This provision makes it clear that storage of processed or unprocessed material in excess of the maximum volume of material or the maximum number of piles specified in the current notice of intent is a violation and therefore will improve the inspection and enforcement process.

The commission proposes §328.4(g)(12) to establish the effective date as required by HB 2541 that the rules must not become effective until the first anniversary of the date on which the rule was adopted.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule.

HB 2541, 80th Legislature, 2007 requires the commission to establish rules regarding the size, fire safety features, and other design and operational standards for certain types of MSW recycling facilities in counties that have sole source aquifers and a population of more than 1.3 million. This bill also requires more stringent standards for facilities located over sole source aquifers. At present, Bexar County is the only county that satisfies the population and aquifer qualifiers contained within HB 2541. The proposed rule implements the provisions of the legislation for Bexar County. In implementing the legislation, the proposed rule establishes annual storage time limits, establishes the maximum volume that can be stored at a facility, establishes limits for individual piles of combustible material, establishes fire lane requirements between piles of combustible materials, establishes a buffer zone between a facility and the facility's boundary, establishes recordkeeping requirements, and requires a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. The proposed rule is anticipated to reduce the likelihood of large, unmanageable fires at mulching and compost facilities in Bexar County that do not have permits or that are not registered.

The proposed rule is not expected to have a significant fiscal impact on the 31 towns and cities in Bexar County with MSW recycling facilities that might be affected. The rule is intended to reduce the risk of fire, which is expected to represent a cost savings to affected local governments by reducing the need for their services.

#### PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be the reduction of risk that large, unmanageable fires at mulching and compost facilities within Bexar County could occur.

Staff expects that there may be as many as three businesses impacted by the proposed rule. These businesses are considered to be small businesses, and the fiscal implications for these businesses can be found in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses in Bexar County as a result of the proposed rule. There may be as many as three businesses that may have to

reduce pile size, expand fire lanes, or increase recordkeeping practices as a result of the proposed rule. Assuming that a mulch or compost facility is located on 20 acres, extra acreage required to be utilized because of pile size reduction and fire lane expansion could cost as much as \$300,000 per year in reduced revenue for the first five years the proposed rule is in effect. Recordkeeping costs could total as much as \$5,000 per year depending on whether the facility currently has an adequate recordkeeping system.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to comply with state law and adequately protect citizens of Bexar County from fire risk at compost and mulching facilities.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rule is not subject to §2001.0225 because it is not a "major environmental rule" and it does not meet any of the four criteria listed in the statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This proposal meets the first part of the definition to be considered a "major environmental rule" because it is intended to protect the environment and reduce risk to human health from environmental exposure. The proposal is intended to implement HB 2541, 80th Legislature, 2007, for certain counties. The provisions that are proposed would establish annual storage time limits, establish the maximum volume that can be stored at a facility, establish size limits for individual piles of combustible material, establish a requirement for fire lanes between piles of combustible materials, establish set back distances from a facility's boundary, establish recordkeeping requirements, and require a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. These provisions would apply to some facilities that are exempt from this subchapter under current THSC, §361.119 and §328.4(a) and §328.5(a). Adverse fiscal implications are anticipated for small or micro-businesses in Bexar County as a result of the proposed rule. There may be as many as three businesses that may have to reduce pile size, expand fire lanes, or increase recordkeeping practices as a result of the proposed rule. Because these adverse fiscal implications would only apply to a limited number of facilities in certain counties, the proposal is not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed rule does not meet the definition of a "major environmental" rule because it is not expected to adversely affect in

a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, a regulatory impact analysis is not required, because the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rule does not meet any of these applicability requirements. First, there are no standards set for these facilities by federal law and the proposal is specifically required by HB 2541, 80th Legislature, 2007. Second, the proposed rule does not exceed an express requirement of state law. THSC, §361.119 and §361.1191 authorize the commission to regulate recycling facilities, but there are no specific statutory requirements for recycling facilities that are exceeded by the proposed rule. Third, the rule does not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose the rule solely under the general powers of the agency, but rather under the authority of: THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; §361.024, which provides the commission with rulemaking authority; §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; §361.119, which authorizes the commission to adopt rules to regulate recycling facilities as solid waste facilities; and §361.1191, which authorizes the commission to adopt rules addressing specific criteria for recycling facilities in certain counties. Therefore, the commission does not propose the adoption of the rule solely under the commission's general powers.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed rule is to ensure that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. The proposal is intended to implement HB 2541, 80th Legislature, 2007, which requires the commission to establish rules regarding the size, fire safety features, and other design and operational standards for certain types of MSW recycling facilities in certain counties. The proposed rule implements the provisions of the legislation for Bexar County.

The proposed provisions for Bexar County would establish: annual storage time limits, the maximum volume that can be stored at a facility, limits for individual piles of combustible material, requirements for fire lanes between piles of combustible materials,

buffer zones from a facility's boundary, recordkeeping requirements, and a requirement for a water pollution abatement plan for facilities located on the recharge or transition zones of the Edwards Aquifer. The proposed rule is intended to reduce the likelihood of large unmanageable fires at mulching and compost facilities in Bexar County.

The proposed rule substantially advances these purposes by amending specific provisions in Chapter 328. The proposed rule provides a benefit to society by protecting the environment, public health, and safety. The provisions relate to reporting and operational requirements for recycling facilities and do not impose a burden on a recognized real property interest and therefore do not constitute a taking.

The promulgation of the proposed rule is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rule does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the proposed rules. Therefore, the proposed rule will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in San Antonio on April 28, 2008, at 2:00 p.m., at the Alamo Area Council of Governments, 8700 Tesoro Drive, Al J. Notzon Board Room #100. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the Commission's Office of Public Assistance at (512) 239-4000. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-044-328-PR. The comment period closes May 5, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Wayne Harry, Municipal Solid Waste Permits Section, at (512) 239-6619.

## STATUTORY AUTHORITY

The amendment is proposed under THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; THSC, §361.119, which authorizes the commission to adopt rules to regulate recycling facilities as solid waste facilities; and THSC, §361.1191, which authorizes the commission to adopt rules addressing specific criteria for recycling facilities in certain counties.

The proposed amendment implements THSC, §361.119, Regulation of Certain Facilities as Solid Waste Facilities, and THSC, §361.1191, Regulation of Certain Recycling Facilities in Certain Counties.

### §328.4. *Limitations on Storage of Recyclable Materials.*

(a) The provisions of subsections (e) and (f) of this section are available to all recycling facilities. In accordance with §§330.11(e)(2), 332.3(d), and 332.23(5) of this title (relating to Notification Required; Applicability; and Operational Requirements), in order to be exempt from the registration and permit requirements under Chapter 330 [§330.4(f)(1)(B)] of this title (relating to Municipal Solid Waste [Permit Required]) or under Chapter 332 of this title (relating to Composting), a facility must comply with the requirements of this section unless:

(1) - (4) (No change.)

(b) (No change.)

(c) A recycling facility that fails to comply with the requirements of this section shall be required, if the executive director so requests in writing, to obtain a permit or registration as a municipal solid waste facility under the provisions of Chapter 330 or Chapter 332 [§330.4] of this title. A facility that receives large quantities of materials as a result of a disaster or other circumstance beyond its control, and a mulching or composting facility that must accumulate a certain volume of materials in order to obtain grinding services from a contractor may not be subject to one or more of the requirements of subsection (b) of this section as determined by the executive director on a case-specific basis for a specified period of time as provided for in subsection (e) of this section.

(d) A facility that processes recyclable material that contains more than incidental amounts of non-recyclable waste must obtain a permit or registration as applicable under Chapter 330 or Chapter 332 [§330.4] of this title unless the executive director approves its request for alternative compliance.

(e) (No change.)

(f) The executive director may grant requests for alternative compliance if the applicant submits sufficient documentation demonstrating that the applicant cannot meet the requirements in the definition of "Incidental amount(s) of non-recyclable waste" in §328.2 of this title without affecting the ability to support related recycling activities. Failure to qualify for alternative compliance will subject the applicant to the permitting or registration requirements of Chapter 330 or Chapter 332 [§330.4] of this title. The executive director's decision will be based on the following factors:

(1) - (12) (No change.)

(g) A municipal solid waste recycling facility that produces mulch or compost that is not required to have a permit or registration

that stores combustible materials and is located in Bexar County shall comply with the following requirements of this subsection. This subsection applies to facilities that are exempt from other requirements of this section as provided in subsection (a) of this section.

(1) Storage time limits of all material. An amount equal to at least 90% by weight of all materials received during the previous year must be removed from the facility annually during each subsequent year.

(2) Maximum volume of combustible material. A facility shall not store processed or unprocessed combustible material in excess of the maximum volume of material indicated in the current notice of intent to operate the facility submitted to the executive director.

(3) Time limits for processing. All combustible material stored by the facility to produce mulch or compost must be ground to an initial particle size not to exceed 6 inches in any dimension no later than 90 days after receipt. Material will not be considered processed until it is ground to a particle size of 6 inches or less in any dimension. Under certain circumstances, an owner or operator may request executive director approval for additional time to grind combustible materials up to 180 days after receipt of the material.

(4) Pile size limits. Each pile of combustible material shall have dimensions not to exceed 25 feet in height. Unprocessed combustible material shall not cover an area greater than 50,000 square feet at the facility, with no single pile exceeding 8,000 square feet. A pile of processed combustible material shall not cover an area greater than 25,000 square feet.

(5) Number of piles. The number of piles of combustible materials at the facility shall not exceed the maximum number specified in the notice of intent to operate the facility submitted to the executive director.

(6) Fire lanes between piles. There shall be a minimum separation of 40 feet from piles of unprocessed combustible materials and 20 feet between piles of processed combustible materials. An all-weather road shall encircle the area used for processing and storage of combustible material. At a minimum, this all-weather roadway shall have minimum 25-foot turning radii; shall be capable of accommodating firefighting vehicles during wet weather; and shall meet applicable local requirements and specifications. The open space between buildings and piles shall be kept open at all times; and be maintained free of combustible material, rubbish, equipment, or other materials. Upon coordination with the local fire marshal, the distance may be increased, as necessary, to protect human health and safety.

(7) Buffer zone. The set back distance from all property boundaries to the edge of the areas receiving, processing, or storing material must be at least 50 feet.

(8) Recharge Zone or Transition Zone. Notwithstanding the applicability requirements of Chapter 213 of this title (relating to Edwards Aquifer), facilities located on a recharge or transition zone shall have a water pollution abatement plan consistent with the requirements of §213.5(b) of this title (relating to Required Edwards Aquifer Protection Plans, Notifications, and Exemptions).

(9) Notice of intent. By the effective date of this subsection for existing facilities or at least 90 days prior to commencing new operations, the owner or operator must file a notice of intent in accordance with §328.5(b) of this title (relating to Reporting and Recordkeeping Requirements) that also includes provisions to demonstrate compliance with this subsection. A revised notice of intent must be filed with the executive director before a facility exceeds the maximum amount of material to be stored as specified in the current notice of intent.

(10) Recordkeeping. The owner or operator of a facility subject to the requirements of this subsection must maintain all records necessary to demonstrate compliance with this subsection.

(11) Compliance. Failure to operate and maintain a facility as proposed in the current notice of intent for the facility is a violation of this chapter.

(12) Effective date. The requirements of this subsection do not become effective until one year after commission adoption of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801546

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 239-2548



## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 3. TAX ADMINISTRATION**

##### **SUBCHAPTER L. MOTOR FUEL TAX--PRIOR TO JANUARY 1, 2004**

**34 TAC §§3.171 - 3.178, 3.180, 3.182 - 3.185, 3.187, 3.189, 3.190, 3.193, 3.195, 3.196, 3.200, 3.202, 3.203**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes to repeal Subchapter L, §§3.171 - 3.178, 3.180, 3.182 - 3.185, 3.187, 3.189, 3.190, 3.193, 3.195, 3.196, 3.200, 3.202, and 3.203. House Bill 2458, 78th Legislature, 2003, provided for the repeal of Tax Code, Chapter 153, and added Tax Code, Chapter 162, to replace the repealed chapter beginning January 1, 2004.

The sections are being repealed because the four year statute of limitations for filing amendments to tax returns under Chapter 153 has expired. Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter S, provide the rules necessary for the administration, collection and enforcement of motor fuel taxes under Chapter 162.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by removing obsolete references from the comptroller's rules relating to the administration of motor fuel taxes. There would be no anticipated significant economic cost to the public. This repeal is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeals may be submitted to Bryant K. Lomax, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under Tax Code, §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeals implement House Bill 2458, 78th Legislature, 2003.

§3.171. *Records Required; Information Required.*

§3.172. *Transit Company Affidavit.*

§3.173. *Refunds on Gasoline and Diesel Fuel Tax.*

§3.174. *Incidental Highway Travel by Bonded Users.*

§3.175. *Liquefied Gas Tax Decals.*

§3.176. *Metering Devices Used To Claim Refund of Tax on Fuel Used in Power Take-Off and Auxiliary Power Units (Tax Code, §153.119 and §153.222).*

§3.177. *Separate Liquefied Gas Tax Permits Required.*

§3.178. *Trip Permit in Lieu of Interstate Trucker Permit.*

§3.180. *Signed Statements for Purchasing Diesel Fuel Tax Free.*

§3.182. *Motor Fuel Transporting Documents.*

§3.183. *On-Highway Travel of Farm Machinery.*

§3.184. *Assignment of Refund Claims for Tax-Paid Gasoline Exported from Texas.*

§3.185. *Diesel Tax Prepaid User Permit.*

§3.187. *Documentation and Reporting of Imports and Exports, Import Verification Numbers, Export Sales by Distributors and Suppliers, and Diversion Numbers.*

§3.189. *Proof of Resale.*

§3.190. *Temperature Adjustment Conversion Table.*

§3.193. *Bad Debt Deductions.*

§3.195. *Electronic Filing of Reports and Due Date for Odd-Year Estimated Reports and Payments.*

§3.196. *Reports, Due Dates, Bonding Requirements, and Qualifications for Annual Filers.*

§3.200. *Transportation Services for Public School Districts.*

§3.202. *Common and Contract Carrier Registration, Reports, Due Dates, and Administrative Remedies.*

§3.203. *Diesel Fuel Tax Exemption for Water, Fuel Ethanol, and Biodiesel Mixtures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 18, 2008.

## PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

### CHAPTER 81. INSURANCE

#### 34 TAC §§81.1, 81.3, 81.7, 81.8

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) §§81.1, 81.3, 81.7, and 81.8 concerning Insurance.

Recent Federal legislation was enacted to prohibit health plans from offering incentives which may encourage members to drop health coverage in favor of TRICARE and TRICARE Supplement plans. These sections are amended to update the rules to delete references to TRICARE or TRICARE Supplement as ERS is not participating in or implementing this program.

Sections 81.1, 81.3, 81.7, and 81.8, concerning Definitions, Administration, Enrollment and Participation, and Waiver of Health Coverage, are amended to delete references to TRICARE and TRICARE Supplement.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be simplified administration for the Texas Employees Group Benefits Program and to make the rule conform to the Board's approved procedures for insurance. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendment may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is May 5, 2008, at 10:00 a.m.

The amendment is proposed under the Texas Insurance Code, §1551.052 which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities.

No other statutes are affected by the proposed amendment.

#### §81.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (18) (No change.)

(19) Insurance premium expenses--Any out-of-pocket premium incurred by a participant, or by a spouse or dependent of such participant, as payment for coverage provided under the Program that

exceeds the state's or institution's contributions offered as an employee benefit by the employer. The types of premium expense covered by the premium conversion plan include out-of-pocket premium for group term life, health (including HMO [and TRICARE Supplement] premiums), AD&D, and dental, but do not include out-of-pocket premium for long or short term disability or dependent term life.

(20) - (28) (No change.)

~~[(29) TRICARE--(formally call CHAMPUS)--The United States Department of Defense (DOD) military health system program for eligible active duty and retired members of the uniformed services, their families, and survivors.]~~

~~[(30) TRICARE Supplement--A supplemental health care coverage plan designed specifically to be secondary coverage to the TRICARE program.]~~

~~(29)~~ [(31)] TRS--The Teacher Retirement System of Texas.

#### §81.3. Administration.

(a) - (b) (No change.)

~~[(c) TRICARE Supplement: In accordance with §1551.221 of the Act, the Board may contract for one or more Carriers as that term is defined under §1551.007 of the Act to offer a TRICARE supplemental health coverage plan to eligible program participants who waive health coverage as described in §81.8 of this chapter.]~~

#### §81.7. Enrollment and Participation.

(a) - (f) (No change.)

(g) Special rules for additional coverages and plans which include optional and voluntary coverages.

(1) Only an employee or retiree or a former officer or employee specifically authorized to join the Program may apply for additional coverages and plans. An employee/retiree may apply for or elect additional coverages and plans without concurrent enrollment in health coverage provided by the Program. Additional coverages and plans, as determined by the board, may include:

- (A) dental coverage;
- (B) optional term life;
- (C) dependent term life;
- (D) short and long-term disability;
- (E) voluntary accidental death and dismemberment;
- (F) long-term care; or
- (G) health care and dependent care reimbursement. ~~;~~

~~or]~~

~~[(H) TRICARE Supplement.]~~

(2) - (5) (No change.)

(h) - (l) (No change.)

#### §81.8. Waiver of Health Coverage.

(a) - (b) (No change.)

(c) Incentive Credit.

(1) An employee or retiree eligible to participate in the Program and who waives health coverage may be eligible for an incentive credit in lieu of the state contribution up to the amount specified in the General Appropriations Act if the individual:

(A) would otherwise have been eligible to receive the state contribution; and

(B) demonstrates, in a manner specified by the System, coverage by another health benefit plan with substantially equivalent coverage to the basic plan. [; or]

~~[(C) is eligible for and enrolled in the TRICARE military health system.]~~

(2) The incentive credit may be applied only toward the cost of eligible optional coverage, as determined by the System. [;]

~~[(A) eligible optional coverage, as determined by the System; or]~~

~~[(B) TRICARE Supplement for participants under age 65.]~~

~~[(3) Coverage under the TRICARE Supplement will be canceled at the end of the month in which the participant reaches the age of 65. A participant whose TRICARE Supplement is canceled will have the incentive credit applied, if applicable, toward eligible optional coverage in which the participant is currently enrolled.]~~

(3) [(4)] Notwithstanding any other provisions of this chapter, optional coverage is not considered voluntary coverage for purposes of the incentive credit in lieu of the state contribution.

~~[(d) Solely with regard to eligible participants waiving health coverage to enroll in the TRICARE Supplement, this Section shall become effective only after the Board has contracted with one or more Carriers to make a TRICARE Supplement health coverage plan available pursuant to §81.3(c) of this chapter (relating to Administration).]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2008.

TRD-200801555

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: May 4, 2008

For further information, please call: (512) 867-7288

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES

##### SUBCHAPTER J. PURCHASED HEALTH SERVICES

##### DIVISION 4. MEDICAID HOSPITAL SERVICES

###### 1 TAC §355.8063

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8063, Reimbursement Methodology for Inpatient Hospital Services, without changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9891), and will not be republished.

The amendment to §355.8063(w) updates the Medicaid reimbursement methodology for freestanding psychiatric facilities effective January 1, 2008. HHSC was directed by the Texas Legislature in the 2008 - 2009 General Appropriations Act (Conference Committee Report, Tex. H.B. 1, 80th Leg., R.S., ch. 1428, art. II-82 (2007)) to adopt a Medicaid reimbursement methodology for freestanding psychiatric facilities that is similar to the prospective payment system used by Medicare.

The Centers for Medicare and Medicaid Services (CMS) approved the state plan amendment that updates the reimbursement methodology for freestanding psychiatric facilities on March 5, 2008. The associated rate change will be implemented on the effective date of this rule and will be made effective January 1, 2008.

The updated reimbursement methodology will allow the Medicaid program to take into account several factors used in the Medicare methodology that have an impact on the costs associated with providing inpatient psychiatric services in Texas. The methodology uses the Medicare federal base rate as the basis for computing a facility-specific per diem rate with several adjustments for factors that influence the cost of care. These adjustments include a rural adjustment, which recognizes the higher costs incurred by hospitals outside urban areas; a length of stay adjustment that takes into account the higher costs of care for hospitalizations that have a shorter length of stay; and a wage adjustment that takes into account the cost of wages specific to county location.

The 30-day comment period closed on January 27, 2008. HHSC received one comment from Timberlawn Mental Health System also on behalf of River Crest and Glen Oaks Hospitals. The comment was in support of the proposed rule as published.

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2008.

TRD-200801549

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 13, 2008

Proposal publication date: December 28, 2007

For further information, please call: (512) 424-6900



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 102. EDUCATIONAL PROGRAMS

##### SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING MASTER TEACHER GRANT PROGRAMS

The Texas Education Agency (TEA) adopts the repeal of and new §§102.1011, 102.1013, and 102.1015, concerning master teacher grant programs. The repeals of §§102.1011, 102.1013, and 102.1015 and new §102.1011 are adopted without changes to the proposed text as published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6716) and will not be republished. New §102.1013 and §102.1015 are adopted with changes to the proposed text as published in the September 28, 2007, issue of the *Texas Register*. The sections implement provisions relating to the master teacher grant programs for reading, mathematics, and science, respectively. The adopted rule actions update, revise, and reorganize provisions for the master teacher grant programs.

The Master Reading Teacher Grant Program was created by House Bill (HB) 2307, 76th Texas Legislature, 1999. The Master

Mathematics Teacher Grant Program was created by HB 1144, 77th Texas Legislature, 2001. The Master Science Teacher Grant Program was created by HB 411, 78th Texas Legislature, 2003. Through 19 TAC §§102.1011, 102.1013, and 102.1015, the commissioner exercised rulemaking authority to adopt rules for implementation of these grant programs. The rules address awarding grants to school districts to pay stipends to selected certified master reading, mathematics, and science teachers who teach at high-need campuses as identified in rule. The commissioner's rules define terms and set forth the procedures for school district applications and administration of grants.

The adopted repeals and new rules update, revise, and reorganize provisions for the Master Teacher Grant programs. Specifically, adopted new 19 TAC §§102.1011, 102.1013, and 102.1015 include the following.

Subsection (a) adds definitions pertinent to the respective Master Teacher Grant program. Each new rule includes an updated definition for "identified high-need campus," and deletes provisions relating to the 2003-2004 and 2004-2005 school years. Definitions for each respective Master Teacher Grant program included in this new subsection maintain language from its corresponding repealed rule.

Subsection (b) specifies the purpose of the respective Master Teacher Grant program.

Subsection (c) clarifies the qualifications of a master reading teacher, master mathematics teacher, and master science teacher, respectively. The adopted qualifications maintain language from the repealed rule, but are reorganized.

At adoption, a technical correction was made in subsection (c) of §102.1013, Master Mathematics Teacher Grant Program, and §102.1015, Master Science Teacher Grant Program. These sections inadvertently listed the requirement of a mathematics specialist certificate and a science specialist certificate for the purposes of becoming a master mathematics teacher and a master science teacher, respectively; however, only a reading specialist certificate exists. Therefore, subsection (c) was modified accordingly in §102.1013 and §102.1015. The qualifications are the same as proposed with the exception of removing the specialist certificate requirement. No modification was needed in §102.1011, Master Reading Teacher Grant Program.

Subsection (d) describes the primary duties of a master teacher. The adopted new rules update and reorganize language retained from the repealed rules.

Subsection (e) reorganizes and updates campus eligibility criteria, including reference to the use of applicable statewide student assessment test scores to identify a high-need campus. The new language changes the allocation of stipends to occur in the school year following the year of notification. This allows school districts sufficient time to hire and schedule master teachers for high-need campuses.

Subsection (f) reorganizes and clarifies language retained from the repealed rules regarding the allocation and use of grant funds.

Subsection (g) adds new language regarding a decision of the commissioner of education concerning the amount of money awarded to a school district. Language from the repealed rules regarding payments is retained with a minor update to a cross reference.

Subsection (h) requires districts to provide proof of master teacher certification of stipend recipients. Language from the repealed rules regarding district designations of stipend recipients is retained, including the timeframe in which state stipends must be paid by local school districts to designated certified master teachers.

Subsection (i) adds new language allowing the commissioner to audit the expenditure of grant funds appropriated for the programs.

The TEA has determined that the adopted amendment will have no adverse economic effect to small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began September 28, 2007, and ended October 28, 2007. No public comments were received on the proposal.

### **19 TAC §§102.1011, 102.1013, 102.1015**

The repeals are adopted under the Texas Education Code, §§21.410, 21.411, and 21.413, which authorize the commissioner to adopt rules as necessary to implement the master reading, mathematics, and science teacher grant programs, respectively.

The repeals implement the Texas Education Code, §§21.410, 21.411, and 21.413.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2008.

TRD-200801506

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: April 8, 2008

Proposal publication date: September 28, 2007

For further information, please call: (512) 475-1497



### **19 TAC §§102.1011, 102.1013, 102.1015**

The new sections are adopted under the Texas Education Code, §§21.410, 21.411, and 21.413, which authorize the commissioner to adopt rules as necessary to implement the master reading, mathematics, and science teacher grant programs, respectively.

The new sections implement the Texas Education Code, §§21.410, 21.411, and 21.413.

*§102.1013. Master Mathematics Teacher Grant Program.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Identified high-need campus--An identified high-need campus is a campus where the percentage of students reported passing the statewide assessment in mathematics averages less than or equal to a percentage designated by the commissioner of education. An identified high-need campus does not include:

(A) a discipline alternative education program operated under the Texas Education Code (TEC), §37.008;



and (B) a juvenile justice alternative education program;

(C) a campus where fewer than 30 students took the statewide assessment in mathematics over the previous three school years for which data are considered.

(2) Master mathematics teacher--An educator who is employed by a school district and has satisfactorily completed the requirements for master mathematics teacher certification. The master mathematics teacher teaches mathematics and serves as a mathematics teacher mentor to other teachers.

(3) Master Mathematics Teacher Grant Program--An annual grant program established in accordance with the TEC, §21.411, under which a school district may apply to the commissioner of education for a grant to pay stipends to selected certified master mathematics teachers who teach at high-need campuses, in accordance with the provisions of this section.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter school.

(5) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(b) Purpose. The Master Mathematics Teacher Grant Program is established to encourage teachers to:

- (1) become certified as master mathematics teachers; and
- (2) work with other teachers and with students in order to improve student mathematics performance.

(c) Qualifications. A certified master mathematics teacher is a person who holds a teaching certificate who:

- (1) has at least three years of teaching experience;
- (2) has satisfactorily completed a course of instruction approved by the State Board for Educator Certification (SBEC) for the purpose of becoming a master mathematics teacher; and
- (3) has successfully performed on the master mathematics teacher certification examination prescribed by the SBEC.

(d) Primary duties. The primary duties of a master mathematics teacher are to teach mathematics and to serve as a mathematics teacher mentor to other teachers for the amount of time and in the manner established by the school district.

- (1) Teaching mathematics is performed when a teacher:

(A) applies knowledge of the interrelated components of mathematics, including number concepts, patterns and algebra, geometry and measurement, probability and statistics, and mathematical processes, and uses expertise in mathematics instruction at the primary, intermediate/middle, or high school level to select, design, implement, and monitor appropriate mathematics instruction;

(B) selects, constructs, and administers appropriate mathematics assessments on an ongoing basis and uses the results to design, inform, and adjust mathematics instruction to promote student achievement;

(C) applies knowledge of a range of mathematical achievement (e.g., advanced learners, students demonstrating mathematics difficulties) and effective instructional approaches to facilitate and promote mathematics achievement;

(D) designs and implements instruction based on the Texas Essential Knowledge and Skills (TEKS) in mathematics at the appropriate grade level; and

(E) creates a positive learning environment that promotes positive student attitudes toward mathematics and provides equitable opportunities for all students to achieve at a high level.

- (2) A mathematics teacher mentor:

(A) provides mentoring and leadership that facilitate appropriate standards-based and research-based mathematics instruction;

(B) communicates and collaborates with educational professionals, parents, and others;

(C) coaches and consults with colleagues;

(D) provides professional development opportunities for faculty; and

(E) makes instructional decisions based on data and supported by evidence from research.

(e) Campus eligibility. Test score averages for the statewide assessment in mathematics for the three previous years will be used to identify a high-need campus.

(1) The commissioner shall determine, based upon student enrollment, whether a district may receive a grant to pay stipends to one or two certified master mathematics teachers per identified high-need campus.

(A) A school district may receive a grant to pay state stipends to two certified master mathematics teachers per identified high-need campus having a large student population as determined annually by the commissioner.

(B) A school district may receive a grant to pay state stipends to one certified master mathematics teacher per identified high-need campus having a small student population as determined annually by the commissioner.

(2) Following the initial year of the grant, a district is not required to reapply for a grant for two consecutive years if the district:

(A) continues to pay a stipend as provided by this subsection;

(B) notifies the commissioner, in accordance with the application instructions, that the circumstances on which the grant was based have not changed; and

(C) notifies the commissioner of changes in the circumstances on which the grant was based, including:

(i) number of months of the teacher's service under master mathematics teacher certification;

(ii) new designated master mathematics teachers on previously unserved identified high-need campuses, as defined in this subsection;

(iii) changes in designated master mathematics teachers on already served identified high-need campuses; and

(iv) additional changes affecting the Master Mathematics Teacher Grant Program, including any information required by the commissioner.

(f) Allocation and use of funds. A school district may apply to the commissioner for grants for each identified high-need campus as defined in subsection (a)(3) of this section to be used to pay a year-end

stipend to certified master mathematics teachers in accordance with this section.

(1) The application must contain a certification by the school superintendent that the grants will be used only for the purpose set forth in the TEC, §21.411.

(2) Applications and reports must be filed with the commissioner during the school year in which a stipend is to be paid in accordance with the application instructions.

(3) Grant funds can only be used for the purpose of paying a year-end stipend to a master mathematics teacher, as defined in subsections (a)(4) and (c) of this section, whose primary duties are to teach mathematics and to serve as a mathematics teacher mentor to others for the amount of time and in the manner established by the school district.

(g) Payments. A decision of the commissioner concerning the amount of money to which a school district is entitled under this section is final and may not be appealed. The commissioner shall reduce payments to a school district proportionately to the extent an eligible teacher does not meet the requirements under subsection (c) of this section for the entire school year. In the event a teacher qualifies as a master mathematics teacher for a partial month, the district's written policy will determine how the district counts the partial month (e.g., as no month served or as an entire month served). Only whole months shall be entered on the application by the district on the teacher's behalf.

(h) Designations by the district. A district that employs more certified master mathematics teachers than the number of grants available under this section shall designate which certified master mathematics teacher(s) to assign the duties required to receive the state stipend(s).

(1) The designation is based on a written policy adopted by the board of trustees of the district.

(2) Each district shall provide to the commissioner proof acceptable to the commissioner of the master mathematics teacher certification of a teacher to whom the district is paying a stipend under this section.

(3) The district shall pay a state stipend for only one designated master mathematics teacher per designated slot on an identified high-need campus.

(4) In unforeseen circumstances (e.g., teacher becomes seriously ill and cannot continue), the district may request from the commissioner an exception to the provisions in this subsection to be considered on a case-by-case basis and only under extreme circumstances.

(5) A decision of the district under this subsection is final and may not be appealed.

(6) The district may use local money to pay additional stipends in amounts determined by the district.

(7) State stipends to certified master mathematics teachers must be paid by local school districts no later than 30 days after receipt of the grant by the school district.

(i) Audit of expenditures. The commissioner may audit the expenditure of grant funds appropriated for purposes of this section.

#### *§102.1015. Master Science Teacher Grant Program.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Identified high-need campus--An identified high-need campus is a campus where the percentage of students reported passing

the statewide assessment in science averages less than or equal to a percentage designated by the commissioner of education. An identified high-need campus does not include:

(A) a discipline alternative education program operated under the Texas Education Code (TEC), §37.008;

(B) a juvenile justice alternative education program; and

(C) a campus where fewer than 30 students took the statewide assessment in science over the previous three school years for which data are considered.

(2) Master science teacher--An educator who is employed by a school district and has satisfactorily completed the requirements for master science teacher certification. The master science teacher teaches science and serves as a science teacher mentor to other teachers.

(3) Master Science Teacher Grant Program--An annual grant program established in accordance with the TEC, §21.413, under which a school district may apply to the commissioner of education for a grant to pay stipends to selected certified master science teachers who teach at high-need campuses, in accordance with the provisions of this section.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter school.

(5) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(b) Purpose. The Master Science Teacher Grant Program is established to encourage teachers to:

(1) become certified as master science teachers; and

(2) work with other teachers and with students in order to improve student science performance.

(c) Qualifications. A certified master science teacher is a person who holds a teaching certificate who:

(1) has at least three years of teaching experience;

(2) has satisfactorily completed a course of instruction approved by the State Board for Educator Certification (SBEC) for the purpose of becoming a master science teacher; and

(3) has successfully performed on the master science teacher certification examination prescribed by the SBEC.

(d) Primary duties. The primary duties of a master science teacher are to teach science and to serve as a science teacher mentor to other teachers for the amount of time and in the manner established by the school district.

(1) Teaching science is performed when a teacher:

(A) applies knowledge of the interrelated components of science, including scientific principles, such as systems and models, properties and patterns, constancy and change; scientific processes, such as inquiry in the laboratory and field, critical thinking and problem-solving; and science concepts, such as relationship between force and motion and interdependence among living systems, and uses expertise in science instruction at the primary, intermediate/middle, or high school level to select, design, implement, and monitor appropriate science instruction. The master science teacher understands ethics in science investigation and laboratory and field safety techniques and employs appropriate pedagogy techniques;

(B) selects, constructs, and administers appropriate science assessments on an ongoing basis and uses the results to design, inform, and adjust science instruction to promote student achievement;

(C) applies knowledge of a range of scientific achievement (e.g., advanced learners, students demonstrating science difficulties) and effective instructional approaches to facilitate and promote science achievement;

(D) designs and implements instruction based on the Texas Essential Knowledge and Skills (TEKS) in science at the appropriate grade level; and

(E) creates a positive learning environment that promotes positive student attitudes toward science and provides equitable opportunities for all students to achieve at a high level.

(2) A science teacher mentor:

(A) provides mentoring and leadership that facilitate appropriate standards-based and research-based science instruction;

(B) communicates and collaborates with educational professionals, parents, and others;

(C) coaches and consults with colleagues;

(D) provides professional development opportunities for faculty; and

(E) makes instructional decisions based on data and supported by evidence from research.

(e) Campus eligibility. Test score averages for the statewide assessment in science for the three previous years will be used to identify a high-need campus.

(1) The commissioner shall determine, based upon student enrollment, whether a district may receive a grant to pay stipends to one or two certified master science teachers per identified high-need campus.

(A) A school district may receive a grant to pay state stipends to two certified master science teachers per identified high-need campus having a large student population as determined annually by the commissioner.

(B) A school district may receive a grant to pay state stipends to one certified master science teacher per identified high-need campus having a small student population as determined annually by the commissioner.

(2) Following the initial year of the grant, a district is not required to reapply for a grant for two consecutive years if the district:

(A) continues to pay a stipend as provided by this subsection;

(B) notifies the commissioner, in accordance with the application instructions, that the circumstances on which the grant was based have not changed; and

(C) notifies the commissioner of changes in the circumstances on which the grant was based, including:

(i) number of months of the teacher's service under master science teacher certification;

(ii) new designated master science teachers on previously unserved identified high-need campuses, as defined in this subsection;

(iii) changes in designated master science teachers on already served identified high-need campuses; and

(iv) additional changes affecting the Master Science Teacher Grant Program, including any information required by the commissioner.

(f) Allocation and use of funds. A school district may apply to the commissioner for grants for each identified high-need campus as defined in subsection (a)(3) of this section to be used to pay a year-end stipend to certified master science teachers in accordance with this section.

(1) The application must contain a certification by the school superintendent that the grants will be used only for the purpose set forth in the TEC, §21.413.

(2) Applications and reports must be filed with the commissioner during the school year in which a stipend is to be paid in accordance with the application instructions.

(3) Grant funds can only be used for the purpose of paying a year-end stipend to a master science teacher, as defined in subsections (a)(4) and (c) of this section, whose primary duties are to teach reading and to serve as a reading teacher mentor to others for the amount of time and in the manner established by the school district.

(g) Payments. A decision of the commissioner concerning the amount of money to which a school district is entitled under this section is final and may not be appealed. The commissioner shall reduce payments to a school district proportionately to the extent an eligible teacher does not meet the requirements under subsection (c) of this section for the entire school year. In the event a teacher qualifies as a master science teacher for a partial month, the district's written policy will determine how the district counts the partial month (e.g., as no month served or as an entire month served). Only whole months shall be entered on the application by the district on the teacher's behalf.

(h) Designations by the district. A district that employs more certified master science teachers than the number of grants available under this section shall designate which certified master science teacher(s) to assign the duties required to receive the state stipend(s).

(1) The designation is based on a written policy adopted by the board of trustees of the district.

(2) Each district shall provide to the commissioner proof acceptable to the commissioner of the master science teacher certification of a teacher to whom the district is paying a stipend under this section.

(3) The district shall pay a state stipend for only one designated master science teacher per designated slot on an identified high-need campus.

(4) In unforeseen circumstances (e.g., teacher becomes seriously ill and cannot continue), the district may request from the commissioner an exception to the provisions in this subsection to be considered on a case-by-case basis and only under extreme circumstances.

(5) A decision of the district under this subsection is final and may not be appealed.

(6) The district may use local money to pay additional stipends in amounts determined by the district.

(7) State stipends to certified master science teachers must be paid by local school districts no later than 30 days after receipt of the grant by the school district.

(i) Audit of expenditures. The commissioner may audit the expenditure of grant funds appropriated for purposes of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2008.

TRD-200801505

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: April 8, 2008

Proposal publication date: September 28, 2007

For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

#### **CHAPTER 73. LICENSES AND RENEWALS**

##### **22 TAC §73.3, §73.7**

The Texas Board of Chiropractic Examiners (Board) adopts amendments to §73.3, relating to continuing education, and §73.7, relating to approved continuing education courses. The amendments describe specific continuing education requirements and make additional editorial changes to these rules. The amendments to §73.3 and §73.7 are adopted with changes. The amendments were published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 469).

Section 73.3, subsection (b)(2), is amended to require that four of the required 16 hours of continuing education shall consist of required courses. A minimum of two hours will consist of an ethics course specific to the practice of chiropractic. A minimum of one hour will consist of recordkeeping, documentation, and coding relevant to the practice of chiropractic in Texas. A minimum of one hour will relate to risk management relating to the Chiropractic Act, the board's rules, and other law relevant to the practice of chiropractic in Texas. Such risk management courses will include identification, investigation, analysis, and evaluation of risks and the selection of the most advantageous method of correcting, reducing, or eliminating, identifiable risks. The existing language of subsection (b)(2) has been divided into new subparagraphs.

The existing language of §73.3(b)(4), relating to locations for continuing education presented by the board, has been deleted and the remaining paragraphs renumbered. Similarly, the related language under §73.7(k) has been deleted. This language is now obsolete.

Adopted (b)(4)(B) clarifies that the letter confirming the illness or disability must be submitted by a doctor of chiropractic, medicine, or osteopathy.

Amendments to §73.7 include amending subsection (g)(2) to include the conjunctive "and" and to amend subsection (g)(3) to include recordkeeping, documentation, and coding and a reference to topics identified by the board as provided under §73.3(b)(2) as part of the list of continuing education topics.

The amendments to §73.7 add to the list of continuing education topics under subsection (g) the following topics: recordkeeping, documentation, and coding; and other public health issues iden-

tified by the Board as provided under §73.3(b)(2)(A)(iv). Subsection (k), relating to the board authorization of required courses, is deleted in order to conform to the amendments of §73.3.

In order to better coordinate the implementation of these proposed amendments and to ensure that licensees are informed of these revised continuing education requirements, the Board is proposing that the revised continuing education requirements will not be implemented before July 2009.

The Board received comments in support of the amendments from Palmer Chiropractic College, the University of Bridgeport, and the Texas Chiropractic Association. The Board received a comment on the rule from Texas Chiropractic College.

One comment asked where the specified four hours of continuing education required under §73.3(b)(2) would be available. The Board anticipates that these courses will be offered in multiple locations by multiple vendors and approved under the Board's existing process for approving continuing education courses. No change was made in response to this comment.

One comment asked if the one-hour risk management continuing education topic could be included as one of the six hours that can be fulfilled online. An online, one-hour risk management course is offered by the Board. Other vendors could submit similar courses for approval. The one-hour risk management course will count as part of the six hours of online training that a Texas doctor of chiropractic may take each year. No change was made in response to this comment.

One comment asked whether vendors may offer continuing education in more than one venue. The deletion of the language in the prior §73.3(b)(4) which described specific venues will allow the vendors previously named to offer continuing education whenever and wherever they so choose, subject to the usual approval by the Board. No change was made in response to this comment.

One comment asked whether the Board would make the comments received on the amendments available to the public prior to the Board meeting where these amendments are considered for adoption. The Board received few comments on the proposed amendments, and the limited time between the close of the comment period and the Board meeting prevented the Board from making the comments available to the public prior to the Board meeting. No change was made in response to this comment.

One comment suggested that the requirement in §73.3(b)(2)(A)(i) - (iii) that instructors must be licensed in Texas would limit highly qualified persons from other jurisdictions from teaching the required continuing education. The Board agreed with this comment and revised items (i) - (iii) to delete the reference to "in the State of Texas."

One comment recommended that §73.3(b)(2)(A)(i) - (iii) be clarified to provide that instructors must have an active license. The Board agreed with this comment and revised items (i) - (iii) to note that "an instructor for this continuing education must have a doctorate degree and must either have an active license to practice chiropractic or law."

These amendments are adopted under Texas Occupations Code §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic and §201.356 relating to continuing education which requires the Board to adopt rules concerning continuing education and

allows the Board to require licensees to attend continuing education classes specified by the Board.

*§73.3. Continuing Education.*

(a) Condition of Renewal. A licensee is required to attend continuing education courses as a condition of renewal of a license.

(b) Requirements.

(1) Every licensee shall attend and complete 16 hours of continuing education each year unless a licensee is exempted under subsection (d) of this section. Each licensee's reporting year shall begin on the first day of the month in which his or her birthday occurs.

(2) The 16 hours of continuing education may be completed at any course or seminar elected by the licensee, which has been approved under §73.7 of this title (relating to Approved Continuing Education Courses).

(A) A licensee must attend any course designated as a "TBCE Required Course," and the course may be counted as part of the 16 hour requirement. Effective with all doctor of chiropractic licenses renewed on or after July 1, 2009, a minimum of four of the 16 required hours of continuing education shall include topics designated by the board.

(i) A minimum of two hours of the total required continuing education shall consist of an ethics course specifically related to the practice of chiropractic. In addition to the requirements in §73.7, an instructor for this continuing education must have a doctorate degree and must either have an active license to practice chiropractic or law or be part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education. This continuing education may not be taken online except as provided under paragraph (4) of this subsection.

(ii) A minimum of one hour of the total required continuing education shall relate to risk management relating to the Chiropractic Act, the board's rules, and other laws relevant to the practice of chiropractic in Texas. For the purpose of this rule, risk management refers to the identification, investigation, analysis, and evaluation of risks and the selection of the most advantageous method of correcting, reducing, or eliminating, identifiable risks. In addition to the requirements in §73.7 of this title, a risk management instructor shall have a doctorate degree and must either have an active license to practice chiropractic or law or be part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education. This continuing education may be taken online through a course offered by the board.

(iii) A minimum of one hour of the total required continuing education shall consist of recordkeeping, documentation, and coding relevant to the practice of chiropractic in Texas. In addition to the requirements in §73.7 of this title, a risk management instructor shall have a doctorate degree and must either have an active license to practice chiropractic or law or be part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education. This continuing education may not be taken online except as provided under paragraph (4) of this subsection.

(iv) In addition, from time to time, the board may issue public memoranda regarding urgent or significant public health issues that licensees need to be aware of. The board will publish such memoranda on the board's web site and distribute the memoranda to the major continuing education providers.

(B) A licensee who serves as an examiner for the National Board of Chiropractic Examiners' Part IV Examination may receive credit for this activity, not to exceed eight (8) hours each year.

(C) No more than six hours or credit may be obtained through online courses.

(3) A list of approved courses, including TBCE Required Courses, is available on the board's website, [www.tbce.state.tx.us](http://www.tbce.state.tx.us), as provided in §73.7(f) of this title. The board will also provide notice of a TBCE Course in its newsletter.

(4) A licensee who is unable to travel for the purpose of attending a continuing education course or seminar due to a mental or physical illness or disability may satisfy the board's continuing education requirements by completing 16 hours of approved continuing education courses online. Video courses will no longer qualify for credit.

(A) If the licensee is unable to take an online course, the licensee must submit a request for special accommodations to complete their continuing education requirements.

(B) In order for an online course to be accepted by the board, a licensee must submit a letter from a licensed doctor of chiropractic, medicine, or osteopathy who is not associated with the licensee in any manner. In the letter, the doctor must state the nature of the illness or disability and certify that the licensee was ill or disabled, and unable to travel for the purpose of obtaining continuing education hours due to the illness or disability.

(C) A licensee is required to submit a new certificate for each year an exemption is sought. An untrue certification submitted to the board shall subject the licensee to disciplinary action as authorized by the Chiropractic Act, Occupations Code §201.501 and §201.502.

(D) The six hour limit provided in subsection (b)(2) of this section for online courses does not apply to a licensee who submits a certification under this subsection.

(c) Verification.

(1) At the request of the Board, a licensee shall submit, to the board, written verification from each sponsor, of the licensee's attendance at and completion of each continuing education course which is used in the fulfillment of the required hours for all years requested.

(2) A licensee submitting hours as a National Boards examiner must submit written verification of the licensee's participation from the National Boards, on National Boards letterhead. The verification must include the licensee's name, board license number, and the date, time, and place of each examination attended by the licensee as an examiner.

(3) Failure to submit verification as required by paragraph (1) of this subsection shall be considered the same as failing to meet the continuing education requirements of subsection (b) of this section.

(d) Qualifying exemption. The following persons are exempt from the requirements of subsection (b) of this section:

(1) a licensee who holds an inactive Texas license. However, if at any time during the reporting year for which such exemption applies such person desires to practice chiropractic, such person shall not be entitled to practice chiropractic in Texas until all required hours of continuing education credits are obtained and the executive director has been notified of completion of such continuing education requirements;

(2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a mental or physical illness or disability which prevented the licensee from complying with the requirements of this

section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee who is first licensed within the 12 months immediately preceding the annual renewal date.

*§73.7. Approved Continuing Education Courses.*

(a) Approved sponsors. The board will approve courses sponsored only by a chiropractic college fully credited through the Council on Chiropractic Education or a statewide, national or international professional association, upon application to the board on a form prescribed by the board. Application forms are available from the board.

(b) Application. A separate application must be submitted for each course and must include the course title, subject and description, the number of credit hours, the date, time and location of the course, and the names and backgrounds of speakers or instructors, the method of instruction, the name, address and telephone number of the course coordinator, and the signature of an authorized representative of the sponsor. Each continuing education course shall be approved for one calendar year only. The number of hours of credit to be earned at a course may not be changed after an application has been submitted to the board.

(c) Application deadline and fee. A sponsor may submit an application no later than 60 days prior to the date of the course, along with a nonrefundable application fee of \$25 for each course. For the purpose of this subsection, where the same course is held in multiple cities or towns, with different speakers, each location is considered a separate course. If a continuing education program consists of separate sessions or modules, on different topics and on different dates, each session or module is considered a separate course.

(d) A sponsor shall certify on the application that:

(1) all course offered by the sponsor for which board approval is requested will comply with the criteria in this section; and

(2) the sponsor will be responsible for verifying attendance at each course and will provide a certificate of attendance as set forth in subsection (i) of this section.

(e) Rejection. The board will notify, in writing, a sponsor of any rejection.

(f) Approved list of courses. The board will maintain a list of approved courses on their website at [www.tbce.state.tx.us](http://www.tbce.state.tx.us) for compliance with §73.3 of this title (relating to Continuing Education).

(g) Criteria for continuing education courses. In order for the board to approve a course, the course must:

(1) be presented by one or more speakers or instructors who demonstrate, through a vitae or resume, knowledge, training and expertise in the topic to be covered;

(2) have significant educational or practical content to maintain appropriate levels of competency; and

(3) be on a topic from one or more of the following categories:

- (A) general or spinal anatomy;
- (B) neuro-muscular-skeletal diagnosis;
- (C) radiology or radiographic interpretation;
- (D) pathology;
- (E) public health;
- (F) chiropractic adjusting techniques;

(G) chiropractic philosophy;

(H) risk management;

(I) physiology;

(J) microbiology;

(K) hygiene and sanitation;

(L) biochemistry;

(M) neurology;

(N) orthopedics;

(O) jurisprudence;

(P) nutrition;

(Q) adjunctive or supportive therapy;

(R) boundary (sexual) issues;

(S) insurance reporting procedures;

(T) chiropractic research;

(U) HIV prevention and education;

(V) acupuncture;

(W) ethics;

(X) recordkeeping, documentation, and coding; or

(Y) other public health issues identified by the board as provided under §73.3(b)(2)(A)(iv) of this title.

(h) The board will not approve any course on practice management or accept credit for such course in satisfaction of the board's continuing education requirement for licensees.

(i) Sponsor responsibilities. A sponsor of an approved course shall:

(1) notify the board in writing prior to any change in course location, date, or cancellation;

(2) provide a roster of participants who attend the course which contains, at a minimum, each participant's name and current license number if a chiropractor, course number, and number of hours earned by each participant. This roster shall be submitted to the Board no later than 30 days after course completion;

(3) provide each participant in a course with a certificate of attendance. The certificate shall contain the name of the sponsor, the name of the participant, the title of the course, the date and place of the course, the amount and type of credit earned, the course number and the signature of the sponsor's authorized representative;

(4) assure that no licensee receives continuing education credit for time not actually spent attending the course. If any participant's absence exceeds ten minutes during any one hour period, credit for that hour shall be forfeited and noted in the sponsor's attendance roster that is submitted to the Board. Furthermore, the sponsor is responsible for seeing that each person in attendance is in place at the start of each course period;

(5) provide the activity rosters and any other additional information about a course to the board upon request;

(6) shall use the course title listed on the sponsor's application, and approved by the board, to advertise the course; and

(7) retain for a period of three years, for each approved course, documentation of compliance with this section, including:

- (A) the curriculum presented;
- (B) the names and vitae for each speaker;
- (C) the attendance roles; and
- (D) credit hours earned.

(j) The board may evaluate an approved sponsor or course at any time to ensure compliance with the requirement of this section. Upon the failure of a sponsor or course to comply with the requirements of this section, the board, at its discretion, may revoke the sponsor or the course's approved status.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2008.

TRD-200801519

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: April 8, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 305-6901



## CHAPTER 75. RULES OF PRACTICE

### 22 TAC §75.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.7 (Required Fees and Charges) to adopt two new fees: a new \$750 fee for an application for the recognition of a chiropractic specialty and an annual \$8 fee for a newsletter to be sent to licensees. The proposed amendment was published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 472). The rule is adopted without changes and will not be republished. The Board also adopts an update to the graphic contained in §75.7(a), which lists agency fees, with the only fee changes being the addition of the two new fees referenced above.

The new fees are adopted to cover the costs associated with reviewing applications for the recognition of chiropractic specialties as recently adopted in §71.13 and to cover the costs associated with producing and mailing a newsletter to be sent primarily to licensees of the Board. No comments were received by the Board on the proposed fees.

These amendments are adopted under Texas Occupations Code §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic and §201.153 relating to the Board's authority to set fees in amounts reasonable and necessary to cover the costs of administering the Chiropractic Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2008.

TRD-200801521

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: April 8, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 305-6901



## PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

#### 22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.24, regarding Processing a Complaint, with changes to the proposed text as published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 474).

The changes to the adopted text that were not in the proposed text consist of two references in §153.24(i) to a fourteen-day deadline for respondents to submit a written response to a complaint; these deadlines were increased to twenty days. This change keeps the amendments consistent with current TALCB practice of allowing twenty days to submit a written response. The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules. Changes in the adopted rules reflect nonsubstantive variations from the proposed rules to improve consistency with current agency practices and to facilitate compliance.

Section 153.24 as adopted establishes procedures for the receipt and tracking of complaints; provides procedures for reviewing and investigating complaints; requires respondents to submit written responses to complaints and to comply with other investigative measures; outlines procedures for reviewing the results of an investigation; and sets forth possible outcomes and penalty ranges based on the circumstances of each complaint case.

The board received no comments during the notice and comment period regarding adoption of the amendment.

The reasoned justification for the amendments is that both consumers and respondents will have a clearly articulated and well defined outline of the processes that occur upon the filing of a complaint with this agency, as well as the disciplinary consequences associated with different types of violations. The amendments will also increase consistency in complaint processing procedures.

The amendments are adopted under Texas Occupations Code §1103.151, Rules Relating to Certification and Licenses, and §1103.154, Rules Relating to Professional Conduct, which authorize the TALCB to adopt rules to facilitate the board's complaint processes and ensure compliance with the provisions of the Texas Appraiser Licensing and Certification Act.

*§153.24. Processing a Complaint.*

(a) Upon receipt of a complaint the Board's staff shall assign the complaint a complaint number.

(b) The Board's staff shall review the complaint including supporting documentation. If the complaint does not contain sufficient information to determine whether the Board has jurisdiction or is considered to be outside the Board's authority, the Board's staff may interview the complainant to develop additional information.

(c) If the Board's staff concludes, after completion of the written investigative report provided for in Tex. Occ. Code §1103.455, that the complaint is outside the jurisdiction of the board or is without merit, the Board's staff may recommend to the commissioner that the investigation be closed and that the complaint be dismissed. If the commissioner concurs with the recommendation, the complainant will be so notified and the investigation will be closed. The Board's staff shall write a dismissal explanation for the dismissed complaint and close the file.

(d) If the Board's staff determines that a possible violation exists, the Board's staff shall proceed with the investigation.

(e) Pursuant to TEX. OCC. CODE §1103.101(b) the Commissioner is delegated those responsibilities with respect to the enforcement processes of the Board set forth in this chapter.

(f) A complaint must be in writing and must be signed by the complainant. The staff may initiate a complaint.

(g) Upon receipt of a complaint, the staff will:

(1) Send written acknowledgement of receipt to the complainant;

(2) Assign the complaint a case number and enter it onto a complaint tracking system which shall provide all necessary documentation to assure tracking of the handling and disposition of the complaint and the reporting of accurate and verifiable performance measures results;

(3) Make a preliminary determination whether the complaint is within the Board's jurisdiction and, if it is not, initiate the necessary correspondence to advise the complainant and dismiss the case for lack of jurisdiction; if there is jurisdiction the staff will continue as follows:

(A) Review the case and, as deemed necessary and appropriate, recommend to the Commissioner that the matter be investigated covertly. If it is not lawful and appropriate to conduct a covert investigation, the staff will continue as follows;

(B) If the complaint involves appraisal activity, transmit a letter to the person who is the subject of the complaint, referred to herein as the "respondent," requiring a response meeting the below-listed criteria:

(i) The respondent shall, within twenty (20) calendar days, send a signed letter transmitting a narrative response to the complaint, addressing each and every element thereof and including numbered references to support in the respondent's work file which is to be marked with corresponding tabs. The twenty (20) day period may be extended for good cause. Any request for extension must be in writing. Email is acceptable. The letter transmitting the response must contain the following statement: EXCEPT AS SPECIFICALLY SET FORTH HEREIN THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE

WORK FILE. (LIST ANY EXCEPTIONS AND IDENTIFY THEM IN THE WORK FILE AS EXCEPTIONS, USING CORRESPONDING TABS.)

(ii) The response may also address other matters not raised in the complaint that the respondent believes likely to be raised by the staff and may be supported by documentation contained in the work file, appropriately identified and tabbed.

(iii) Any supporting documentation that is provided that was not in the work file must be conspicuously labeled as such and kept separate from the work file.

(iv) The response must provide a list of any and all persons known to the respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the respondent's possession, contact information.

(4) Staff shall review the response, including all supporting materials provided and, no later than 60 days after receipt, contact the respondent to discuss the matter. In this discussion, which may be in person or by telephone, the assigned staff person conducting the investigation will advise the respondent as to:

(A) Their preliminary views, based on a review of the complaint, the response, and all supporting documentation provided, as to the merits of the complaint;

(B) Their preliminary views as to any other violations of the Act, the Rules, or USPAP identified in this review process; and

(C) Unless they believe that additional investigative work is warranted, what they would view as an appropriate resolution.

(5) Following this conversation, if the respondent believes that a face-to-face meeting to discuss the matter further would facilitate resolution, the staff person may agree to such a meeting.

(6) Any general agreement in principle as to resolution may be reduced to a proposed form of consent order or consent agreement and, if the staff attorney and the Commissioner concur, may be presented to the Board for approval, denial, or a request for changes and re-presentation.

(7) If agreement as to resolution cannot be reached, the staff shall proceed with any necessary investigation and the preparation and prosecution of a contested case before the State Office of Administrative Hearings subject to TEX. GOV'T. CODE, Chapter 2001 and TEX. OCC. CODE, Chapter 1103.

(h) In determining the proper disposition of a complaint, staff shall follow the following guidelines:  
Figure: 22 TAC §153.24(h)

(1) In addition to the recommended actions provided for above, staff may recommend any or all of the following:

(A) Reducing or increasing the recommended penalty based on documented factors that support the deviation;

(B) Probating all or a portion of a sanction or administrative penalty for a period not to exceed five (5) years;

(C) Requiring additional reporting requirements; and/or

(D) Such other recommendations, with documented support, as will achieve the purposes of the Act, the Rules, and/or USPAP.

(2) Any and all administrative sanctions provided for above are in addition to an agreement or order to comply fully with applicable laws, rules, and regulations.



(3) If after a review of the file and completion of any investigation deemed necessary, the staff concludes that no regulatory purposes would be served by further action, it shall recommend to the Board that the complaint be dismissed without further action.

(i) Whenever staff becomes aware of facts or circumstances that indicate a reasonable likelihood that mortgage fraud may have been committed with the involvement or participation of a licensee, staff will coordinate the handling of that matter in accordance with applicable laws and rules, including the rules of the Mortgage Fraud Task Force under the auspices of the Office of the Attorney General, and make any appropriate referrals and/or reports to prosecutorial authorities or other oversight authorities.

(j) All final orders must be approved by the Board.

(k) The reviews and investigations provided for in these rules are of a regulatory nature and do not constitute engaging in appraisal activity subject to USPAP. With the Commissioner's or the Board's prior approval, staff may perform or engage others to perform appraisal activity for the Board as needed to carry out an effective regulatory oversight and enforcement program.

(l) A Peer Investigative Committee that has been appointed in accordance with TEX. OCC. CODE §1103.453 and it shall receive such compiled complaint files as the Chair may refer to them, review them, and make a report to staff as to:

(1) The general facts presented;

(2) Whether the allegations in the complaint are believed to be true or false and, if believed true, provide a statement as to which documents in the complaint file support that view;

(3) Whether the review indicated any other violations of USPAP that should be added to the complaint and, if so, a statement as to which documents in the complaint file support that view; and

(4) If it is believed that additional investigative work needs to be done, a statement as to what additional investigation is believed to be warranted.

(m) The foregoing processes are deemed to be a regulatory review and are not deemed to be appraisal activity. Staff may rely on the report as setting forth the findings of fact necessary to support any appropriate conclusions of law and determination as to an appropriate regulatory resolution.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801481

Devon Bijansky

Assistant General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: April 6, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 465-3900



## PART 10. TEXAS FUNERAL SERVICE COMMISSION

## CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

### 22 TAC §203.26

The Texas Funeral Service Commission (commission) adopts an amendment to Title 22, §203.26, concerning Funeral Directors and Embalmers License Requirements and Procedure.

The amendment is adopted without changes to the proposed text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 50) and will not be republished.

The amendment ensures all applicants submit to an FBI criminal background check.

The commission received no comments.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2008.

TRD-200801509

O.C. Robbins

Executive Director

Texas Funeral Service Commission

Effective date: April 8, 2008

Proposal publication date: January 4, 2008

For further information, please call: (512) 936-2466



### 22 TAC §203.38

The Texas Funeral Service Commission (commission) adopts an amendment to Title 22, §203.38, relating to reinstatement of funeral director and/or embalmer licenses.

The amendment is adopted without change to the proposed text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 51) and will not be republished.

The amendment revises the license descriptions that have been cancelled or revoked.

The commission received no comments.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2008.

TRD-200801510

O. C. Robbins  
Executive Director  
Texas Funeral Service Commission  
Effective date: April 8, 2008  
Proposal publication date: January 4, 2008  
For further information, please call: (512) 936-2466



## 22 TAC §203.40

The Texas Funeral Service Commission (commission) adopts a new rule to Title 22, Texas Administrative Code, Chapter 203, §203.40.

The new rule is adopted without change to the proposed text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 52) and will not be republished.

The new rule allows persons whose provisional license has been cancelled for failure to comply due to a personal situation to petition the commission for reinstatement.

The commission received no comments.

The new rule is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2008.

TRD-200801511  
O.C. Robbins  
Executive Director  
Texas Funeral Service Commission  
Effective date: April 8, 2008  
Proposal publication date: January 4, 2008  
For further information, please call: (512) 936-2466



## PART 11. TEXAS BOARD OF NURSING

### CHAPTER 223. FEES

#### 22 TAC §223.1

The Texas Board of Nursing adopts an amendment to 22 Texas Administrative Code §223.1 (Fees) without changes to the proposed text. The proposed rule amendment was initially published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1232). Effective October 1, 2007, the fee for an FBI fingerprint-based criminal history record information, a/k/a criminal background check, was temporarily reduced from \$24 to \$19.25. (The Texas Department of Public Safety's fee is still \$15.) This fee is for an interim period and subject to change. Due to the variable nature of the fee imposed by the FBI and the Texas Department of Public Safety (DPS), the Board grants discretion to the Staff to adjust the fee, as needed, to reflect the actual fee being imposed by the FBI and the DPS instead of coming to the Board each time the fee is changed and requesting the authority to adjust the fee and amend the rule.

No comments were received in response to the proposed amendment.

The amendments is adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorize the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 19, 2008.

TRD-200801522  
Katherine Thomas  
Executive Director  
Texas Board of Nursing  
Effective date: April 8, 2008  
Proposal publication date: February 15, 2008  
For further information, please call: (512) 305-6823



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER K. TERMINATION OF FINANCIAL ASSURANCE FOR UNDERGROUND STORAGE TANKS

#### 28 TAC §§5.9101 - 5.9107

The Commissioner of Insurance adopts new Subchapter K, §§5.9101 - 5.9107, concerning required notice to the Texas Commission on Environmental Quality (TCEQ) by an insurer or other entity providing financial assurance for an underground storage tank if the insurance or other financial assurance is cancelled or non-renewed. Sections 5.9103 and 5.9106 are adopted with changes to the proposed text published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 58). Sections 5.9101, 5.9102, 5.9104, 5.9105, and 5.9107 are adopted without changes and will not be republished.

**REASONED JUSTIFICATION.** The new sections are necessary to specify the requirements and procedures for insurers or other entities providing financial assurance for underground storage tanks to provide notice to the TCEQ after the insurance or other financial assurance for underground storage tanks is canceled or non-renewed. The TCEQ regulates underground storage tanks pursuant to the Water Code §§26.34 - 26.367. New amendments to the Water Code §26.352, enacted by HB 1956, 80th Legislature, effective September 1, 2007, require an insurer or other entity providing financial assurance for the purposes of meeting the statutory financial responsibility requirements for owners or operators of underground storage tanks to provide notice to the TCEQ within 30 days after termination of insurance or other financial assurance. The new amendments to the Water Code §26.352 also require the Department to adopt rules to implement and enforce the new termination notice requirements. The adopted new sections are necessary to implement the new termination notice requirements.

The rule proposal was published for public comment in the *Texas Register* January 4, 2008. On February 4, 2008, the TCEQ filed a comment with the Department. No other comments were received.

The TCEQ comments that there are approximately 20,000 underground storage tank facilities in Texas, and there is an ongoing potential threat of releases from those systems into the soil and groundwater of the state. According to the TCEQ, clean up of contamination can be costly, so it is essential that releases be reported to the TCEQ and that the responsible parties have the financial ability to perform the necessary clean up. The TCEQ comments that the new sections will assist in identifying underground storage tank facilities that are operating without proper financial assurance. Currently, according to the TCEQ, it relies on "candid self-reporting" by tank owners and operators of compliance with financial assurance requirements, combined with random or targeted inspections. The TCEQ comments that the new sections greatly strengthen compliance by requiring insurers and other entities providing financial assurance for underground storage tanks to notify the TCEQ any time a tank owner or operator is effectively without financial assurance.

Further, the TCEQ comments favorably on three specific aspects of the adopted sections: (i) an insurance company or other entity providing financial assurance is required to provide the TCEQ with notice any time an underground storage tank owner or operator is effectively without insurance or other financial assurance, regardless of who initiates the termination, enabling the TCEQ to respond to all instances of insurance or other financial assurance termination; (ii) adopted new §5.9104(a)(7) requires the insurer or other entity providing financial assurance for an underground storage tank to provide the TCEQ with the facility identification number assigned by the TCEQ within 30 days of termination of the insurance or financial assurance, enabling the TCEQ to quickly identify the specific tank system and respond accordingly; (iii) adopted new §5.9106 requires the insurer or other entity providing financial assurance to provide a notice of rescindment if the insurance or financial assurance is reinstated, enabling the TCEQ to focus compliance efforts on cases that truly represent a threat to state funds.

The Water Code §26.352(a) requires the TCEQ to establish requirements for owners or operators of underground storage tanks to maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of an underground storage tank. New subsection (e) of the Water Code §26.352 requires that an owner or operator of an underground storage tank submit annual proof to the TCEQ that the owner or operator maintains financial responsibility as required by §26.352(a). New subsection (e-1) of the Water Code §26.352 requires that an insurance company or other entity that provides financial assurance to an owner or operator of an underground storage tank notify the TCEQ if the insurance coverage or other financial assurance is canceled or not renewed not later than the 30th day after the date the coverage terminates. New subsection (e-1) of the Water Code §26.352 also requires the insurance company or other entity providing financial assurance to mail, fax, or email the notice of the cancellation or non-renewal to the TCEQ not later than the 30th day after the date the coverage terminates.

The new sections will aid the TCEQ in administering subsections (a), (e), and (e-1) of the Water Code §26.352. The new

sections will provide specific guidance regarding the procedures to follow in notifying the TCEQ if the insurance or other financial assurance is canceled or not renewed, and will thereby provide necessary information to assist the TCEQ in enforcing the statutory requirements for maintenance of insurance coverage or other financial assurance for owners or operators of underground storage tanks before a costly accidental release occurs from an underground storage tank not insured or otherwise financially assured by the owner or operator.

The only two changes to the proposed sections as published are (i) the addition of the article the to the first reference to the TCEQ in the text of §5.9106(a); and (ii) the change of the proposed effective date from April 1, 2008, to May 1, 2008, for an insurer or other entity providing financial assurance for an underground storage tank to provide notice to the TCEQ if the insurance or other financial assurance is terminated. The new sections apply only to notices required to be issued under the Water Code §26.352(e-1) and that are issued on or after May 1, 2008, regardless of when the insurance policy or other form of financial assurance was issued or created. The change in effective date from April 1, 2008, to May 1, 2008, is necessary to provide more advance notice to insurance companies and other entities providing financial assurance to owners/operators of underground storage tanks so that they may prepare for compliance with the new sections. The changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

**HOW THE SECTIONS WILL FUNCTION.** Adopted new §5.9101 states the purpose of the new sections, which is to specify the requirements and procedures for insurers or other entities providing financial assurance for the purposes of meeting financial responsibility requirements for underground storage tank owners or operators under the Water Code §26.352 to notify the TCEQ after insurance or other financial assurance for an underground storage tank is canceled or not renewed.

Adopted new §5.9102 provides definitions for financial assurance and insurer. Financial assurance is defined as a financial instrument used to comply with financial responsibility requirements established under the Water Code §26.352; insurer is defined as an entity operating under the Insurance Code providing insurance or other financial assurance to an owner or operator of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352, including all entities operating under the Insurance Code Chapters 941 (Lloyd's plans), 942 (reciprocals and interinsurance exchanges), 981 (surplus lines insurers), and 2201 (risk retention groups and purchasing groups).

Subsection (a) of adopted new §5.9103 provides that the new sections apply to all insurers providing insurance or other financial assurance to an owner or operator of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352. Subsection (b) of adopted new §5.9103 provides that all provisions of the subchapter except §5.9107 (relating to Disciplinary Actions by the Commissioner of Insurance) apply to other entities providing financial assurance for the owners or operators of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352. Adopted new §5.9103(c) provides that the specific new notice requirements of §5.9104 and §5.9105 shall apply only to notices required to be issued on and after May 1, 2008.

Adopted new §5.9104 addresses the content of the termination notice. Subsection (a) of adopted new §5.9104 requires that an insurer or other entity providing financial assurance for the owners or operators of underground storage tanks provide notice to the TCEQ of the termination of the insurance or other financial assurance. Subsection (a) of adopted new §5.9104 also specifies the information that must be included with the notice of termination. Section 5.9104(a)(1) - (8) specifies the information required to be provided to the TCEQ, including the location of the underground storage tank, the effective date that the insurance or financial assurance was cancelled or non-renewed, the reason for the termination, and the facility identification number assigned by the TCEQ for each underground storage tank that has insurance coverage or other financial assurance canceled or not renewed. Subsection (b) of adopted new §5.9104 requires accurate and complete notice to the TCEQ.

Adopted new §5.9105 specifies the procedures for submission of the notice. Adopted new §5.9105(a) requires that the insurer, or other entity providing, holding, or maintaining financial assurance for an underground storage tank send the notice of termination not later than the 30th day after the date the coverage terminates. Adopted new §5.9105(b) requires that the insurer, or other entity providing financial assurance, mail, fax or email the notice to the TCEQ, and specifies mail, fax and email listings for the provision of such notice.

Adopted new §5.9106 specifies requirements and procedures in the event of rescindment of the notice of termination. Adopted new §5.9106(a) requires that an insurer or other entity providing financial assurance that rescinds a notice of termination provided to the TCEQ send written notice to the TCEQ of such rescindment in accordance with §5.9105(b) not later than the 10th day after the termination is rescinded. Adopted new §5.9106(b) requires that the notice of rescindment include a copy of the notice under §5.9104 that is being rescinded or the policy number or other financial assurance identification number and the facility identification number(s) assigned by the TCEQ for the underground storage tank(s) insured or otherwise financially assured. Adopted new §5.9106(c) requires accuracy and complete information in the notice of rescindment required under §5.9106(b).

Adopted new §5.9107 provides for possible disciplinary actions by the Commissioner of Insurance for violations of the statutory and rule requirements.

#### SUMMARY OF COMMENTS.

Comment: One commenter states that there are approximately 20,000 underground storage tank facilities in Texas, and there is an ongoing potential threat of releases from those systems into the soil and groundwater. According to the commenter, clean up of contamination can be costly, so it is essential that releases be reported to the TCEQ and that the responsible parties have the financial ability to perform the necessary clean up. The commenter states that the adopted sections will assist the TCEQ in identifying underground storage tank facilities that are operating without proper financial assurance. Currently, according to the commenter, the TCEQ relies on candid self-reporting by tank owners and operators of compliance with financial assurance requirements, combined with random or targeted inspections. The commenter states that the adopted sections greatly strengthen compliance by requiring insurers and other entities providing financial assurance to notify the TCEQ any time a tank owner or operator is effectively without financial assurance.

The commenter specifically supports three aspects of the new sections: (i) an insurance company or other entity providing financial assurance is required to provide the TCEQ with notice any time an underground storage tank owner or operator is effectively without insurance or other financial assurance, regardless of who initiates the termination, enabling the TCEQ to respond to all instances of insurance or other financial assurance termination; (ii) adopted new §5.9104(a)(7) requires the insurer or other entity providing financial assurance for an underground storage tank to provide the TCEQ with the facility identification number assigned by the TCEQ within 30 days of termination of the insurance or financial assurance, enabling the TCEQ to quickly identify the specific tank system and respond accordingly; (iii) adopted new §5.9106 requires the insurer or other entity providing financial assurance to provide a notice of rescindment to the TCEQ if the insurance or financial assurance is reinstated, enabling the TCEQ to focus efforts on cases that truly represent a threat to state funds.

Agency Response: The Department appreciates the supportive comment.

#### NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Texas Commission on Environmental Quality.

Against: None.

STATUTORY AUTHORITY. The new sections are adopted under the Water Code §26.352(e-1) and the Insurance Code §36.001. Subsection (e-1) of the Water Code §26.352 requires that an insurance company or other entity that provides insurance coverage or another form of financial assurance to an owner or operator of an underground storage tank for purposes of the Water Code §26.352 notify the TCEQ if the insurance coverage or other financial assurance is canceled or not renewed not later than the 30th day after the date the coverage terminates. Subsection (e-1) of the Water Code §26.352 further requires that the Department adopt rules to implement and enforce this subsection. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

#### §5.9103. *Applicability.*

(a) This subchapter is applicable to all insurers providing insurance or other financial assurance to owners or operators of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352.

(b) All provisions of this subchapter except §5.9107 (relating to Disciplinary Actions by the Commissioner of Insurance) also apply to any other entity providing, holding, or maintaining financial assurance for the owners or operators of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352.

(c) This subchapter applies only to notices required to be issued under the Water Code §26.352(e-1) and that are issued on or after May 1, 2008, regardless of when the insurance policy or other form of financial assurance was issued or created.

#### §5.9106. *Rescindment of Cancellation or Non-Renewal.*

(a) An insurer or other entity that rescinds a cancellation or non-renewal noticed to the TCEQ pursuant to the Water Code §26.352(e-1) and §5.9104 of this subchapter (relating to Content of Notice) must send written notice to the TCEQ of such rescindment in

accordance with §5.9105(b) of this subchapter (relating to Submission of Notice) not later than the 10th day after the cancellation or non-renewal is rescinded.

(b) The notice of rescindment required in subsection (a) of this section must include:

(1) a copy of the notice under §5.9104 of this subchapter that is being rescinded; or

(2) both of the following:

(A) the policy number or other financial assurance identification number, and

(B) the facility identification number(s) assigned by the TCEQ for the underground storage tank(s) insured or otherwise financially assured.

(c) The notice required by subsection (a) of this section must be accurate and contain all the information required under subsection (b) of this section. It is the sole responsibility of the insurer or other entity providing, holding, or maintaining financial assurance to obtain and maintain the information necessary to complete the required notice.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 20, 2008.

TRD-200801526

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: April 9, 2008

Proposal publication date: January 4, 2008

For further information, please call: (512) 463-6327



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 1. GENERAL LAND OFFICE**

#### **CHAPTER 15. COASTAL AREA PLANNING**

##### **SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM**

###### **31 TAC §15.29**

The General Land Office (GLO) adopts amendments to §15.29 relating to Certification Status of City of the Village of Jamaica Beach Dune Protection and Beach Access Plan (Plan) with changes to the text as proposed in the January 4, 2008, issue of the *Texas Register* (33 TexReg 61). The changes to the adopted text are minor and reflect the change of the references to the Village of Jamaica Beach to its official name "City of the Village of Jamaica Beach." The GLO adopts an amendment to §15.29 concerning the certification status of the Plan, adopted on August 16, 1993, and amended by the City of the Village of Jamaica Beach (Village), on December 6, 1993. The amendment to §15.29 certifies as consistent with state law the amendments to the Village Plan that were adopted on September 17, 2007, by Ordinance No. 2007-6. The amendment includes a variance requested by the Village relating to the use of unreinforced fibercrete in four feet by four feet sections in the area 25 feet

landward of the north toe of the dune to 200 feet landward of the line of vegetation. Copies of the local government dune protection and beach access plan and any amendments to those plans are available from the City Secretary, Teri White, who may be contacted at P.O. Box 5264, Jamaica Beach, TX 77554, Phone: (409) 737-1142, Fax: (409) 737-5211, Email: cityadmin@ci.jamaicabeach.tx.us.

###### **BACKGROUND**

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 - 15.12 and 15.21 - 15.36), a local government with jurisdiction over Gulf Coast beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification pursuant to 31 TAC §15.3(o). The GLO reviews a local beach access and dune protection plan and, if appropriate, certifies that the plan is consistent with state law by adoption or amendment of a rule as authorized in Texas Natural Resources Code §§61.011(d)(5), 61.015(b), and 63.054(c). The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO as provided in 31 TAC §15.3(o)(4).

A local government requesting certification of a plan or plan amendment that includes a variance of any requirement or prohibition in the GLO's Beach/Dune Rules must submit to the GLO a reasoned justification demonstrating how the variance provides equal or better protection of dunes, dune vegetation, and public access to and use of the public beach than is provided by the Beach/Dune Rules as provided in 31 TAC §15.3(o)(6).

Jamaica Beach is a coastal community located on Galveston Island, a barrier island accessible from the east via Interstate Highway 45 and FM 3005, and from the west via State Highway 332, Bluewater Highway, and the bridge at San Luis Pass. The Village consists of areas bordering Galveston Bay to the northwest and the Gulf of Mexico to the southeast, and bordered on the northeast and the southwest by the City of Galveston. The Village includes approximately 2/3 miles of beach bordering on the Gulf of Mexico.

The Gulf beaches and adjacent areas governed by the Plan are those areas within the corporate limits of the City of the Village of Jamaica Beach. Galveston County expressly delegated the authority to regulate dune protection and beach access in the Village of Jamaica Beach to the Village in Section II(C)(3) of the Galveston County dune protection and beach access plan certified as consistent with state Law in 31 TAC §15.35.

###### **VARIANCE**

On September 17, 2007, the City Council of Jamaica Beach adopted amendments to its Plan and submitted those amendments to the GLO with a request for certification received by the GLO on September 24, 2007. The Village requested that the GLO certify a Plan amendment that includes a variance from the prohibitions and requirements of §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of the Beach/Dune Rules. Section 15.4(c)(8) prohibits the construction of concrete slabs or other impervious surfaces within 200 feet landward of the natural line of vegetation. Section 15.5(b)(3) prohibits a local government from issuing a beach-front construction certificate if the construction includes a proposal to build a concrete slab or other impervious surface within 200 feet landward of the line of vegetation or within the eroding area boundary, whichever distance is greater. Section 15.6(f)(3) applies to construction in eroding areas and provides that a lo-

cal government may allow a permittee to alter or pave only the ground within the footprint of the habitable structure only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet landward from the line of vegetation or landward of an eroding area boundary established in the local dune protection and beach access plan, whichever distance is greater.

The requested variance establishes special standards for eroding areas providing that: (1) paving or altering the grade below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune; (2) paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joists or pervious materials approved by the City Building Official, in that area 25 feet from the north toe of the dune to 200 feet landward of the line of vegetation, with driveway width limited to no more width than necessary to service two vehicles; (3) the City shall assess a "Fibercrete Maintenance fee" of \$200.00 to be used to pay for the clean-up of fibercrete from the public beaches should the need arise; and (4) reinforced concrete may be used under the habitable structure and for a driveway connecting the habitable structure and the street in that area landward of 200 feet from the line of vegetation. The use of the term "expansion joist" in the ordinance is understood by the GLO to mean the "expansion joint" or area of separation between the fibercrete sections.

#### SUMMARY AND RESPONSE TO PUBLIC COMMENT

The GLO received comments on the adopted amendment from Lorraine Brown stating that the commenter had no problem with the fibercrete ordinance. However, the commenter stated that the Plan amendment should not be approved because the Village is not in compliance with its dune protection and beach access plan due to the lack of beach access signage on FM 3005 and at the entrance to the beach access roads and the lack of public access to the beach. The GLO expresses no opinion in this rulemaking action with regard to these assertions and disagrees with the commenter that the Village's compliance with respect to signage and beach access is relevant to a determination by the GLO as to whether the Plan amendments concerning fibercrete as submitted by the Village are consistent with the OBA, the Dune Protection Act, and the GLO's Beach/Dune Rules. The Plan amendments as submitted made no changes to vehicular restrictions or beach access. No change in the adopted amendment was made based on these comments. However, the GLO will investigate the commenter's assertions concerning compliance with requirements for signage and beach access and take appropriate action.

#### REASONED JUSTIFICATION

The reasoned justification submitted by the Village in support of its request for the variance authorizing the use of fibercrete in eroding areas within 200 feet seaward of the line of vegetation demonstrates that it advances the public interest and provides an equal or better level of protection of dunes, dune vegetation, and public access to and use of the beach in that: (1) the ordinance provides financial assurance for debris removal and beach clean-up through imposition of the \$200 fibercrete maintenance fee; (2) debris removal and beach clean-up are facilitated by the use of unreinforced fibercrete in large 4 foot x 4 foot sections rather than small pavers, with less sand removed from the beach during clean-up; and (3) prohibiting the use of fibercrete in

the area between the line of vegetation and 25 feet from the north toe of the dune ensures that dune hydrology are not adversely affected. In addition, the fibercrete ordinance is consistent with a similar ordinances adopted by the City of Galveston and Galveston County for similar conditions nearby and certification of the Village's ordinance promotes uniformity in regulations.

The GLO finds that, based on reasoned justification submitted by the Village in support of its request for the variance authorizing the use of fibercrete, the adopted amendments to the Plan provide an equal or better level of protection of dunes, dune vegetation, and public access to and use of the public beach. Accordingly, the General Land Office finds that the variance requested by the Village meets the requirements for a variance under §15.3(o)(6) of the Beach/Dune Rules and hereby certifies as consistent with state law the requested variances from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of the Beach/Dune Rules (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards). Certification of the Plan amendment shall not be considered in any manner as a waiver of rights of the GLO concerning any previous failure by the Village to comply with its certified plan, the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules.

#### CONSISTENCY WITH CMP

The adopted amendment to §15.29 concerning Certification Status of Village of Jamaica Beach Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.26, relating to Policies for Construction in the Beach/Dune System, and §501.27, relating to Policies for Development in Coastal Hazard Areas. The amendment will not allow the material weakening of dunes and does not affect the requirement that unavoidable damage to dunes and dune vegetation be compensated. Additionally, the amendment will preserve public beach access by assisting with debris removal in the event of a storm. The GLO has determined that the proposed actions provide equal or better protection for dunes, dune vegetation, and public access to and use of the beach as the GLO's Beach/Dune Rules that the Council has determined to be consistent with the CMP. Consequently, the GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. No comment on the consistency of the adopted amendment with the CMP was received during the comment period.

#### ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the envi-

ronment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and Texas Natural Resources Code §63.121 which provides the Texas General Land Office with authority to adopt rules for protection of critical dune areas.

#### STATUTORY AUTHORITY.

The amendments are adopted under the Texas Natural Resources Code §§61.011, 61.015(b), 61.022(c), and 61.070, which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law. In addition, Texas Natural Resources Code §63.054 and §63.121 provide the Texas General Land Office with authority certify local government dune protection plans and to adopt rules for protection of critical dune areas.

Texas Natural Resources Code §§61.011, 61.015, 61.022, 61.070, and 63.121 are affected by the proposed amendments.

*§15.29. Certification Status of City of the Village of Jamaica Beach Dune Protection and Beach Access Plan.*

(a) The City of the Village of Jamaica Beach has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The Village's plan was adopted on August 16, 1993 and amended December 6, 1993 and September 17, 2007.

(b) The General Land Office certifies as consistent with state law the following variances from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of this title (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards) in the Village's plan. The plan establishes special standards for eroding areas providing that:

(1) paving or altering the grade below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune;

(2) paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in maximum of 4 foot x 4 foot sections, which shall be a maximum of four inches thick with sections separated by expansion joists or pervious materials approved by the City Building Official, in that area 25 feet from the north toe of the dune to 200 feet landward of the line of vegetation, with driveway width limited to no more width than necessary to service two vehicles;

(3) a "Fibercrete Maintenance fee" of \$200.00 shall be assessed to be used to pay for the clean-up of fibercrete from the public beaches should the need arise; and

(4) reinforced concrete may used under the habitable structure and for a driveway connecting the habitable structure and the street in that area landward of 200 feet from the line of vegetation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 20, 2008.  
TRD-200801523

Trace Finley  
Policy Director  
General Land Office  
Effective date: April 9, 2008  
Proposal publication date: January 4, 2008  
For further information, please call: (512) 475-1859

## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

##### SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

#### 34 TAC §§41.34, 41.36, 41.38, 41.39

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to the following rules for the health benefits program for active public education employees (TRS-ActiveCare) administered by TRS, as trustee: §41.34, relating to eligibility for coverage under TRS-ActiveCare; §41.36, relating to enrollment periods for TRS-ActiveCare; §41.38, relating to termination date of coverage under TRS-ActiveCare; and §41.39, relating to coverage under TRS-ActiveCare for individuals changing employers. The amended sections are adopted mainly to address a new, extended enrollment opportunity and to address revised special enrollment events under TRS-ActiveCare. Section 41.36 is adopted with changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8704). Sections 41.34, 41.38, and 41.39 are adopted without changes and will not be republished. Amended §41.36 is adopted with technical, clarifying, non-substantive changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register*. In the March 21, 2008, issue of the *Texas Register* (33 TexReg 2553 and 2555) related amendments are adopted for rules concerning the health benefits program for TRS retirees administered by TRS as trustee for the program, TRS-Care: 34 TAC §41.2 (Additional Enrollment Opportunity) and §41.7 (Effective Date of Coverage).

Changes to §22.004 of the Education Code (relating to Group Health Benefits for School Employees), made pursuant to House Bill 973, 80th Legislature, Regular Session (2007) (H.B. 973), entitle school district employees who resign effective after the last day of an instructional year to participate or be enrolled in their existing coverage, whether under TRS-ActiveCare or under some other coverage offered by the district, for an additional period of time beyond the date of resignation. In the usual situation, this additional period of time will extend existing coverage through the summer months (i.e., June, July, and August).

In light of the above, one of the substantive adopted amendments to §41.34 is the addition of a new paragraph (5) that recognizes this additional period of time for coverage as another eligibility factor. The substantive adopted amendments to §41.38 are all located in the new subsection (b). That subsection provides that a covered individual who resigns his employment po-

sition with a participating entity effective after the last day of an instructional year and who is in "good standing" with TRS-ActiveCare at the time of the effective date of resignation, is entitled to automatically remain enrolled in TRS-ActiveCare, through the first anniversary of the date participation in or coverage under TRS-ActiveCare was first made available to employees of that participating entity for the last instructional year in which the covered individual was employed by the participating entity, provided none of the events described in provisions of §41.38(a) occur after the effective date of the covered individual's resignation. Consequently, if the employer of the covered individual became a participating entity in TRS-ActiveCare on or before the September 1st that immediately preceded the effective date of resignation by the covered individual, then the covered individual shall automatically be entitled to coverage through the August 31st that immediately follows the effective date of resignation, assuming termination does not sooner occur due to the occurrence of an event described in provisions of §41.38(a) after the effective date of the covered individual's resignation. Alternatively, if the employer of the covered individual became a participating entity in TRS-ActiveCare after the September 1st that immediately preceded the effective date of resignation by the covered individual, then the covered individual shall automatically be entitled to coverage through the end of the 12th month of that participating entity's participation in TRS-ActiveCare, assuming termination does not sooner occur due to the occurrence of an event described in provisions of §41.38(a) after the effective date of the covered individual's resignation. A dependent enrolled in TRS-ActiveCare under a covered individual who qualifies for continued coverage pursuant to §41.38(b) is also automatically entitled to remain enrolled in TRS-ActiveCare only for such time as the covered individual remains enrolled in TRS-ActiveCare. Section 41.38(b) also contains a definition of "good standing" and various directives concerning the term "instructional year."

Pursuant to Board authorization granted in February 2007, TRS filed the appropriate documentation with the Centers for Medicare & Medicaid Services (CMS) to elect to exempt (i.e., opt out) TRS-ActiveCare from Provisions 2 and 3 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Provision 2 of HIPAA addresses special enrollment events.

The other substantive adopted amendment to §41.34, located in renumbered paragraph (8), reflects TRS-ActiveCare's opting out of the special enrollment provision of HIPAA. Consequently, the special enrollment events of TRS-ActiveCare are described and defined in adopted amendments to §41.34(8), through the adoption of HIPAA standards, save and except as to listed exceptions to HIPAA contained therein. The substantive amendments found in §41.36(d) and §41.39(a)(1) are similar. Amended §41.36(d) will reference the description and definition of special enrollment events found in adopted amendments to §41.34(8). The deletion of the second sentence in §41.36(d) is adopted because this language is being adopted as an addition to §41.34(8). The remaining adopted changes to §41.36 and §41.39 are for purposes of clarification.

Section 41.36 is adopted with technical, clarifying, non-substantive changes to the proposed text as published. In subsections (e), (f), and (g) of amended §41.36, similar changes are adopted to move the requirements for an effective election under each of those subsections to the main body of the subsection from paragraph (2) in each case. Such reformatting does not substantively change the language of the proposed text or the requirements of an effective election under subsections (e), (f), and (g) of adopted §41.36. In addition, the word "shall" is changed to

"may" in subsection (g) of adopted §41.36 to clarify the true nature of the options available to affected persons under that subsection and to make that subsection consistent with similar, unamended language in subsections (e) and (f) of adopted §41.36. Specifically, a covered employee to whom subsection (e), (f), or (g) applies is offered the opportunity to make one of the elections provided under the applicable subsection but is not required to do so. A covered employee could decide not to make an election to enroll or remain enrolled in the TRS-ActiveCare program via an approved HMO or via a TRS-ActiveCare preferred provider organization coverage plan.

No comments were received regarding the proposed amended sections.

Statutory Authority: The amended sections are adopted under the authority of §1579.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the TRS-ActiveCare program.

*§41.36. Enrollment Periods for TRS-ActiveCare.*

(a) A full-time or part-time employee who becomes employed in an eligible capacity with a participating entity has an initial enrollment period of 31 days, beginning on the first day that the full-time or part-time employee becomes employed in an eligible capacity with a participating entity and ending at 11:59 p.m. Austin Time on the 31st day thereafter.

(b) A full-time or part-time employee whose employer becomes a participating entity has an initial enrollment period beginning no later than 31 days prior to the date on which the employer becomes a participating entity and ending on the last calendar day of the month immediately preceding the date on which the employer becomes a participating entity ("end date"). Notwithstanding the preceding sentence, a large school district, as defined hereafter, that becomes a participating entity after September 1, 2003, may recommend an initial enrollment period of not less than 31 days that closes before the end date. A recommended initial enrollment period that closes before the end date is subject to approval by TRS. As used in this section, a large school district shall mean a school district that had 1001 or more employees at any time during the 2001 school year, as reflected on any report received by TRS from that school district for a reporting period in that school year.

(c) A full-time or part-time employee's eligible dependents, if covered, must be enrolled in the same coverage plan as the full-time or part-time employee under whom they qualify as a dependent. Except as otherwise provided under applicable state or federal law, an eligible full-time or part-time employee may not change coverage plans or add dependents during a plan year.

(d) The enrollment period for an individual who becomes eligible for coverage due to a special enrollment event, as described in §41.34(8) of this title (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program), shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within this 31-day period.

(e) Eligible full-time and part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is not renewed for the next plan year may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare during the plan enrollment period. Coverage under the elected option becomes effective



on September 1 of the next plan year. One of the following elections may be made under this subsection:

(1) change to another approved HMO for which the full-time or part-time employee is eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions.

(f) Eligible full-time or part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is terminated during the plan year may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after notice of the contract termination is sent to the eligible full-time or part-time employee by TRS or its designee. Coverage under the elected option becomes effective on a date determined by TRS. One of the following elections may be made under this subsection:

(1) change to another approved HMO for which the full-time or part-time employees and their eligible dependents are eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions.

(g) Eligible full-time or part-time employees and their eligible dependents enrolled in an approved HMO whose eligibility status changes because the eligible full-time or part-time employee no longer resides, lives, or works in the HMO service area may make one of the elections provided under this subsection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after the employee's change in eligibility status. Coverage under the elected option becomes effective on the first day of the month following the date the employee's eligibility status changed. One of the following elections may be made under this subsection:

(1) enroll in another approved HMO for which the full-time or part-time employee is eligible; or

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, subject to applicable preexisting condition limitations.

(h) The trustee by resolution may prescribe open-enrollment periods and the conditions under which an eligible full-time or part-time employee and his eligible dependents may enroll during an open enrollment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 20, 2008.

TRD-200801533

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: April 9, 2008

Proposal publication date: November 30, 2007

For further information, please call: (512) 542-6438



## SUBCHAPTER D. COMPARABILITY OF GROUP HEALTH COVERAGES

### 34 TAC §41.91

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §41.91, relating to certification of insurance coverage. The amended section is adopted without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9100).

House Bill 2427, 80th Legislature, Regular Session (2007) ("H.B. 2427"), amended the provisions of §22.004 of the Education Code (relating to Group Health Benefits for School Employees) to eliminate the requirement that the executive director of TRS certify whether, for each district that does not participate in TRS-ActiveCare, the district's coverage is comparable to the basic health coverage provided under Chapter 1551, Insurance Code. Pursuant to H.B. 2427, the responsibility for each such determination now falls upon the school districts that do not participate in TRS-ActiveCare. Accordingly, amended §41.91 is adopted to conform the rule to the provisions of H.B. 2427 regarding certification of insurance coverage. To that end, the amended section defines the term "school district" in new subsection (a) to clarify that three of the four general types of entities that may be "participating entities" in TRS-ActiveCare are subject to the amended rule. The fourth general type of entity that may be a "participating entity" in TRS-ActiveCare, a regional education service center, is not included in the adopted definition because all of those centers are required to participate in TRS-ActiveCare.

In renumbered §41.91(c), each school district, not the executive director of TRS, is required to determine the comparability of the group health coverage that each district offers to its employees. For that same reason, existing §41.91(f) is deleted. Because each school district, not the TRS executive director, will be required to determine the comparability of coverage offered by the school district to its employees under these adopted amendments, the following additional changes are adopted: (i) the opening language of existing subsection (d) is changed to clarify that each school district, not TRS staff under the direction of the executive director, must develop a methodology and criteria for determining the comparability of coverage; and (ii) large portions of existing subsection (d) are eliminated.

The adopted amendments in new subsection (e), new subsection (f), and relettered subsection (g) mirror the existing and new requirements of §22.004(d), Education Code, as amended by H.B. 2427. Those subsections address various former requirements of TRS that H.B. 2427, and the related adopted amendments to §41.91, now place upon the school districts. The remaining changes to §41.91 are adopted for purposes of clarifying the rule.

No comments were received regarding the proposed amended section.

Statutory Authority: The amended section is adopted under the authority of §22.004, Education Code, which requires TRS to adopt rules for a determination of whether a school district's group health coverage is comparable to the basic health coverage offered under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) and which authorizes the TRS executive director to determine additional appropriate information to be included in a district's report that complies with §22.004, Education Code, and that the district must submit to the TRS executive director.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 20, 2008.

TRD-200801534

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: April 9, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 542-6438



## PART 9. TEXAS BOND REVIEW BOARD

### CHAPTER 181. BOND REVIEW BOARD

#### SUBCHAPTER A. BOND REVIEW RULES

##### 34 TAC §§181.1 - 181.6, 181.9 - 181.11

The Texas Bond Review Board (BRB) adopts 34 TAC Chapter 181, Subchapter A, §§181.1 - 181.6 and §§181.9 - 181.11, concerning Bond Review Rules. Sections 181.2, 181.3, 181.5, and 181.10 are adopted with changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9276). Sections 181.1, 181.4, 181.6, 181.9, and 181.11 are adopted without changes to the proposed text and will not be republished.

Texas Government Code, Chapter 1231 was amended by the Texas Legislature 80th Regular Session, Senate Bill 1332 effective September 1, 2007. The amendments are to address the changes in Texas Government Code Chapter 1231 and to clarify processes related to the issuance of state securities and reporting requirements.

Comments submitted by Steven E. Simmons, Texas Department of Transportation, recommended that the Texas Mobility Fund be enumerated in §181.9 as exempt from the regular BRB approval process. The agency disagreed and did not make the change. A program to be exempted is at the discretion of the Board. Mr. Simmons noted the change to §181.3(c) with no recommended changes. His comments were taken under review and no change was made. The commenter recommended that the semi-annual report remain a voluntary practice under §181.10. The agency disagreed and did not make the change. The report is necessary to ensure accurate information in meeting BRB reporting requirements. The commenter noted the absence of rules related to the Department of Transportation's (TxDOT) Private Activity Bond (PAB) rules and requested clarification. Statutory authority to adopt rules for the specific program was granted to TxDOT in Transportation Code §222.035(f). At the time of adoption, the BRB commented on those rules.

Comments submitted by Terry Hull, The University of Texas System, noted that as written §181.2(e)(2)(F) would require an issuer to execute a related credit agreement prior to seeking BRB approval of the state security. The agency agreed and made a change. Mr. Hull commented that under §181.2(e)(2)(G) certain approvals cannot be obtained prior to the notice of intent submission. The agency agreed and made the change. The commenter noted that the submission of a complete bond tran-

script by §181.5(a)(3)(B) is unnecessary and results in additional costs to state issuers. The agency disagreed and made no change. The transcript is a necessary reference for the agency. Mr. Hull recommended the deletion of §181.5(a)(3)(C) as unnecessary. The agency agreed and made the change. Mr. Hull recommended the deletion of §181.10(b)(1) as unnecessary. The agency agreed and made the change.

**ADMINISTRATIVE CHANGES:** Staff recommended the rewording of §181.3(c)(5) for clarification regarding the requirements if the lease purchase is for items subject to a guaranteed energy savings contract. The BRB agreed.

The amendments are adopted under Texas Government Code, §1231.022, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

The amended rules implement Texas Government Code, Chapter 1231.

##### *§181.2. Notice of Intention to Issue.*

(a) Unless exempt pursuant to §181.9 of this title (relating to State Exemptions), an issuer intending to issue state securities shall submit a written or electronic notice of intention to issue to the bond finance office no later than the last Wednesday of the month prior to the month requested for Board consideration. Prospective issuers are encouraged to file the notice of intention as early in the issuance planning stage as possible. A notice of intention under this subsection is not required prior to each new issuance of commercial paper if the issuer's commercial paper program has been approved by the Board or if it is exempt from approval pursuant to the provisions of §181.9 of this title.

(b) A notice of intention to issue under this section shall include:

(1) A brief description of the proposed issuance, including, but not limited to, the purpose, the tentative amount, proposed security, type of interest and any related credit agreements;

(2) the proposed timing of the issuance with a tentative date of sale and a tentative date for closing, or if the state securities are to be issued in the form of commercial paper notes, the period over which the state securities will be issued for projects to be financed;

(3) A request to have the issue of state securities scheduled for consideration by the Board during a specified bi-monthly meeting; and

(4) An agreement to submit the required application described in §181.3 of this title (relating to Application for Board Approval of State Security Issuance) no later than the first Tuesday of the month in which the applicant requests Board consideration.

(c) An issuer may reschedule the date requested for Board consideration of the state securities by submitting an amended notice of intention at any time prior to the application date in the same manner as provided in this section.

(d) The requested date for Board consideration shall be granted whenever possible. If at the Board's discretion, it becomes necessary to change the date of the Board meeting for consideration of the proposed issuance of state securities, notice of such change shall be sent to the issuer as soon as possible.

(e) An issuer intending to issue state securities that are exempt from approval pursuant to §181.9 of this title shall submit during regular business hours a written or electronic notice of intent to the bond finance office at least five business days prior to the date the securities

are to be issued. Prospective issuers are encouraged to file the notice of intention as early in the issuance planning stage as possible.

(1) To be considered at the next regularly scheduled planning session, if required by the Board pursuant to §181.9(d) of this title, the notice of intent must be submitted to the bond finance office no later than the last Tuesday of the month prior to a regularly scheduled Board meeting.

(2) Exempt issuers are required to submit a notice of intent which must contain:

(A) a completed exempt issuer state debt notice of intent in the form required by the bond finance office;

(B) proposed debt service schedule;

(C) proposed cash flow schedule, if applicable;

(D) proposed sources and uses statement;

(E) timetable of the financing;

(F) derivatives program summary in the form required by the bond finance office, if applicable;

(G) documentation that all necessary approvals of the issuance of the state securities or the project to be financed with the proceeds of the state securities have been obtained from the appropriate state boards or state agencies except:

(i) the approval of the state securities by the Attorney General;

(ii) environmental approvals and permits;

(H) Board memorandum for the proposed transaction prepared for issuer's governing board, if available.

#### *§181.3. Application for Board Approval of State Securities Issuance.*

(a) An officer or entity may not issue state securities unless the issuance has been approved or exempted from review by the Board. An officer or entity that has not been granted an exemption from review by the Board and that proposes to issue state securities shall apply for Board approval by filing one application with original signatures and nine copies with the Executive Director of the bond finance office. The Executive Director of the bond finance office shall forward one copy of the application to each member of the Board and one copy to the Office of the Attorney General.

(b) Applications must be filed with the bond finance office no later than the first Tuesday of the month in which the applicant requests Board consideration. Applications filed after that date will be considered at the regular meeting only with the approval of the Chair or two or more members of the Board.

(c) An application for approval of a lease-purchase agreement to be deemed complete must include:

(1) a completed lease purchase application form in the form required by the bond finance office;

(2) documentation that all necessary approvals of the issuance of the lease purchase have been obtained from the appropriate state boards or state agencies except:

(A) the approval of the state securities by the Attorney General;

(B) environmental approvals and permits;

(3) draw schedule, if applicable;

(4) proposed amortization schedule; and

(5) if the lease purchase is for the acquisition of energy conservation measures, which are subject to a guaranteed energy savings contract, a copy of the proposed contractual agreement, a copy of the third party review, and any other documentation related to the guarantee.

(d) An application for all state securities other than lease-purchase agreements to be deemed complete must include:

(1) a completed state debt application in the form required by the bond finance office;

(2) documentation that all necessary approvals of the issuance of the state securities or the project to be financed with the proceeds of the state securities have been obtained from the appropriate state boards or state agencies except:

(A) the approval of the state securities by the Attorney General;

(B) environmental approvals and permits;

(3) if a blind pool financing, a copy of the demand survey or justification indicating reasonable expectation to lend proceeds;

(4) a substantially complete draft or summary of the proposed resolution, order, or ordinance providing for the issuance of the state security;

(5) copy of preliminary official statement, if available;

(6) proposed cash flow;

(7) proposed draw schedule, if applicable;

(8) proposed sources and uses statement;

(9) timetable of the financing;

(10) derivatives program summary, in the form required by the bond finance office, if applicable; and

(11) Board memorandum for the proposed transaction prepared for issuer's governing board, if available.

(e) Applications to authorize the issuance of a state security in the form of commercial paper notes or for the approval of program proceedings authorizing the periodic issuance of commercial paper notes shall contain the information required by subsection (d) of this section to the extent it is available or capable of being determined.

(f) Commercial paper notes to fund any project or projects that will be permanently financed with tuition revenue bonds or general revenues of the state may not be issued unless the issuance of the notes, or the project or projects, have been specifically approved by the Board.

(g) At any time before the date for consideration of an application by the Board, an applicant may withdraw the application. Revisions to an application must be submitted in writing not less than 72 hours prior to the Board meeting.

(h) A member of the Board or bond finance office staff may require additional information to be submitted with respect to a complete notice of intent or application for state securities.

#### *§181.5. Submission of Final Report.*

(a) Within 60 days after the delivery of the state securities and receipt of the state security proceeds, the issuer shall submit one original of a final report in the form required by the bond finance office.

(1) For state securities issued in the form of lease purchases, the reporting requirements of subsection (b) of this section shall be applicable.

(2) For state securities issued in the form of commercial paper notes, the reporting requirements of subsection (c) of this section shall be applicable.

(3) A final report for state securities, other than lease-purchases and commercial paper, must include:

(A) all actual costs of issuance as well as the underwriting spread for competitive financings, the private placement fee for private placements, all closing costs, and any other costs incurred during the issuance process;

(B) a complete bond transcript, including the preliminary official statement and the final official statement, private placement memorandum, if applicable, or any other offering documents as well as all other executed documents pertaining to the issuance of the state security.

(b) Within 90 days after the signing of a lease purchase the purchaser shall submit an original lease purchase final report to the bond finance office. A final report for lease purchases must include a detailed explanation of the terms of the lease-purchase agreement, including but not limited to, amount of purchase, trade-in allowance, interest charges, service contracts, remaining draw amount if applicable, and a final or estimated amortization as applicable.

(c) In lieu of the reporting requirements of subsection (a) of this section, an issuer of state securities issued in the form of commercial paper notes shall submit a report to the bond finance office pursuant to §181.10(c) of this title so long as the issuer has authority to issue commercial paper under the program proceedings approved by the Board or exempt from approval pursuant to §181.9 of this title.

#### *§181.10. State Debt Issuer Reports.*

(a) All issuers whose state securities are subject to review by the Board must file state debt issuer reports with the bond finance office on a semi-annual basis. Reports shall be submitted no later than March 15 for the six month period ending the last day of February and no later than September 15 for the six month period ending August 31.

(b) The semi-annual reports shall include:

(1) an explanation of any change during the fiscal year previous to the deadline for this report, in the debt-retirement schedule for any outstanding state security issue (e.g. exercise of redemption provision, conversion from short-term to long-term securities, etc.);

(2) a description of any state security issues expected during the fiscal year, including type of issue, estimated amount, and expected month of sale;

(3) a list of all state security issues outstanding and corresponding debt service schedules for all securities outstanding in a digital and hard copy format; and

(4) a list of all interest rate management agreements, including the associated issue name, effective and termination dates, original and current notional amounts, terms of the agreement (fixed rate paid/variable rate received, variable rate paid/variable rate received), true interest cost, counterparty and counterparty ratings.

(c) An issuer of state securities issued in the form of commercial paper notes shall submit as part of the required semi-annual reports the following information for so long as the issuer has authority to issue commercial paper under program proceedings approved by the Board or exempt from approval pursuant to §181.9 of this title. The report shall contain the following information:

(1) the aggregate principal amount of commercial paper that the issuer is authorized to issue and have outstanding at any one time;

(2) the aggregate principal amount of commercial paper outstanding as of the end of such semi-annual period;

(3) the aggregate principal amount of commercial paper issued to fund project costs during such semi-annual period; and

(4) a list of the projects for which commercial paper was issued during such semi-annual period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 20, 2008.

TRD-200801528

Melissa Robbins

Financial Analyst

Texas Bond Review Board

Effective date: April 9, 2008

Proposal publication date: December 14, 2007

For further information, please call: (512) 475-4803



## SUBCHAPTER B. PUBLIC SCHOOL FACILITIES FUNDING PROGRAM RULES

### **34 TAC §§181.21, 181.23, 181.25, 181.27, 181.29, 181.31, 181.33, 181.35**

The Texas Bond Review Board (BRB) repeals 34 TAC Chapter 181, Subchapter B, §§181.21, 181.23, 181.25, 181.27, 181.29, 181.31, 181.33, and 181.35, concerning Public School Facilities Funding Program Rules, without changes to the proposal as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9282).

The public school facilities funding program has been repealed by the Texas Legislature 79th Regular Session, House Bill 1106 effective June 18, 2005. The rules have become obsolete and are no longer needed.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Chapter 1231, Texas Government Code, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 20, 2008.

TRD-200801529

Melissa Robbins

Financial Analyst

Texas Bond Review Board

Effective date: April 9, 2008

Proposal publication date: December 14, 2007

For further information, please call: (512) 475-4803



CHAPTER 190. ALLOCATION OF STATE'S  
LIMIT ON CERTAIN PRIVATE ACTIVITY  
BONDS

SUBCHAPTER A. PROGRAM RULES

**34 TAC §§190.1 - 190.3, 190.7**

The Texas Bond Review Board (BRB) adopts amendments to 34 TAC Chapter 190, Subchapter A, §§190.1 - 190.3 and §190.7, concerning the Allocation of State's Limit on Certain Private Activity Bonds, without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9587) and will not be republished.

The amendments update rules to edify procedures currently accepted by BRB staff and comply with statute as changed by Senate Bill 1332 and House Bill 3552. These laws took effect on January 1, 2008.

The purposes of the rule amendments are to comply with current statute and clarify existing BRB processes. As part of updating administrative procedures, the rule amendments clarify the difference between original carryforward procedures and the newer carryforward procedures added during the 78th Legislative Session.

The 30-day comment period ended January 20, 2008, and BRB did not receive any comments on the proposed amendments. No public hearing was requested under Texas Government Code §2001.029.

The amendments are adopted under the Texas Government Code, §1372.004, which provides the board of BRB with broad rulemaking authority to accomplish the purposes of Chapter 1372.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 21, 2008.

TRD-200801548

Leslie Lawler

Assistant Attorney General

Texas Bond Review Board

Effective date: April 10, 2008

Proposal publication date: December 21, 2007

For further information, please call: (512) 475-4800

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Agency Rule Review Plan

Texas State Soil and Water Conservation Board

### Title 31, Part 17

TRD-200801574

Filed: March 25, 2008



## Proposed Rule Reviews

State Board for Educator Certification

### Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 227, Provisions for Educator Preparation Students, Subchapter A, Admission to an Educator Preparation Program, and Subchapter B, Teach for Texas Pilot Program, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 227 continue to exist. The comment period begins April 4, 2008, and ends following receipt of public comments on the rule review of 19 TAC Chapter 227 at the SBEC meeting to be held on May 9, 2008.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028.

TRD-200801596

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,  
Texas Education Agency

State Board for Educator Certification

Filed: March 26, 2008



The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 228, Requirements for Educator Preparation Programs, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 228 continue to exist. The comment period begins April 4, 2008, and ends following receipt of public comments on the rule review of 19 TAC Chapter 228 at the SBEC meeting held on May 9, 2008.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028.

TRD-200801597

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,  
Texas Education Agency

State Board for Educator Certification

Filed: March 26, 2008



Texas Department of Transportation

### Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review 43 TAC Part 1, Chapter 1, Management (see also proposed changes to Chapter 1 published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9922)) and Chapter 11, Design.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-200801552

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: March 24, 2008



## Adopted Rule Review

Texas Facilities Commission

### Title 1, Part 5

Pursuant to the notice of the proposed rule review published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9735), the Texas Facilities Commission (Commission) has reviewed and considered for readoption, revision, or repeal Texas Administrative Code, Title 1, Part 5, Chapter 122, Facilities Space Planning, in accordance with Texas Government Code §2001.039 (Vernon 2000). The Commission

has considered, among other things, whether the agency rulemaking authority and business necessity for adoption of these rules continue to exist.

No comments were received on the proposed rule review.

During its review, the Commission determined that the agency rule-making authority remains in effect and the business necessity for these rules also continues to exist. The Commission intends to readopt Texas Administrative Code, Title 1, Part 5, §§122.1 - 122.3, as these rules were promulgated to direct space planning for state-owned and state-leased facilities, including state agency requests for space allocation, relinquishment, or modification. In addition, this chapter establishes general space allocation guidelines, provides for state agency requests for waivers from such guidelines, and also establishes an appeal process from Commission determinations concerning space allocation. Revisions to these rules, however, are required to reflect the recent agency name change by updating references throughout the chapter and an agency Internet website address, to delete definitions

that are no longer in use, and to correct typographical errors, including reformatting. Through a concurrent notice of proposed rules, the Commission readopts 1 Texas Administrative Code §§122.1 - 122.3 with amendments.

These rules are readopted under the statutory authority granted to the Commission in Texas Government Code, §2165.104(c) (Vernon Supp. 2007) and §2165.108 (Vernon 2000).

This completes the Commission's review of Texas Administrative Code, Title 1, Part 5, Chapter 122, Facilities Space Planning.

TRD-200801524

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 20, 2008

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# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.



Figure: 22 TAC §153.24(h)

Nature of Violation(s)	Range of Recommended Actions
1 <sup>st</sup> time occurrence - violation(s) of the Act, Rules, and/or USPAP that do not, individually or collectively, constitute evidence of a serious inability or unwillingness to comply	First time violator letter with acknowledgement of violation
1 <sup>st</sup> time occurrence - violation(s) of the Act, Rules, and/or USPAP that individually or collectively, constitute evidence of a serious but remediable deficiency	First time violator with agreement to take remedial course work and/or adopt preventive policies and procedures and/or administrative penalty of \$100 to \$500 per violation
1 <sup>st</sup> time occurrence - violation(s) of the Act, Rules, and/or USPAP that individually or collectively, was done willfully or in a grossly negligent manner	Suspension or revocation and an administrative penalty of \$1,000 to \$3,000 per violation
2 <sup>nd</sup> time violation(s) of the Act, Rules, and/or USPAP that do not, individually or collectively, constitute evidence of a serious inability or unwillingness to comply	Administrative penalty of \$250 to \$1,000 per violation with agreement to take remedial course work and/or adopt preventive policies and procedures
2 <sup>nd</sup> time violation(s) of the Act, Rules, and/or USPAP that individually or collectively, constitute evidence of a serious but remediable deficiency	Administrative penalty of \$500 to \$1,500 plus required remedial course work and adoption of preventive policies and procedures
2 <sup>nd</sup> time occurrence - violation(s) of the Act, Rules, and/or USPAP that individually or collectively, was done willfully or in a grossly negligent manner	Revocation and administrative penalty of \$2,000 to \$5,000
3 <sup>rd</sup> time violation(s) of the Act, Rules, and/or USPAP that do not, individually or collectively, constitute evidence of a serious inability or unwillingness to comply	Administrative penalty of \$1,000 to 2,500 with agreement to take remedial class work and/or adopt preventive policies and procedures
3 <sup>rd</sup> time violation(s) of the Act, Rules, and/or USPAP that individually or collectively, constitute evidence of a serious but remediable deficiency	Suspension for up to 180 days or Revocation with agreement to take remedial class work and adopt preventive policies and procedures
3 <sup>rd</sup> time occurrence - violation(s) of the Act, Rules, and/or USPAP that individually or collectively, was done willfully or in a grossly negligent manner	Revocation and administrative penalty of \$5,000
Unlicensed activity	Administrative penalty of \$1,500 to \$5,000

**THE COUNTY OF** (insert county name)                   §  
**STATE OF TEXAS**   §

# AFFIDAVIT

# I

## II

WITNESS BY HAND(S) ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS \_\_\_\_ DAY OF \_\_\_\_\_,  
\_\_\_\_\_.

**TABLES AND GRAPHICS** April 4, 2008 33 TexReg 2837

Figure: 30 TAC §285.90(3)

**Figure 3. Sample Testing and Reporting Record.**

This testing and reporting record shall be completed, signed, and dated after each maintenance check and test. One copy shall be retained by the maintenance provider performing the maintenance. The second copy shall be sent to the local permitting authority and the third copy shall be sent to the system owner.

1. Required frequency of maintenance check and tests - (daily, weekly, monthly, quarterly, every 4 months).

Actual date of test: \_\_\_\_\_

2. System inspection:

Property Address: \_\_\_\_\_

Permit Number: \_\_\_\_\_

Person Performing Inspection: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Inspected Item	Operational	Inoperative
----------------	-------------	-------------

Aerators

Filters

Irrigation Pumps

Recirculation Pumps

Sludge Condition

Disinfection Device

Chlorine Supply

Electrical Circuits

Distribution System

Sprayfield Vegetation/Seeding  
(if applicable)

Other as Noted

3. Repairs to system (list all components replaced): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Tests required and results:

Test	Required		Results mg/l, mpn/100 ml, or trace	Test Method
	Yes	No		
BOD (Grab)				
TSS (Grab)				
Cl <sub>2</sub> (Grab)				
Fecal Coliform				

5. Date(s) responded to owner complaints during reporting period (attach copy of complaint and findings):

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6. General comments or recommendations: \_\_\_\_\_

---

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Figure: 30 TAC §285.91(2)

**Table II. Septic Tank and Aerobic Treatment Unit Sizing.**

**SEPTIC TANK MINIMUM LIQUID CAPACITY**

A. Determine the applicable wastewater usage rate (Q) in TABLE III of 30 TAC Chapter 285.

B. Calculate the minimum septic tank volume (V) as follows:

1. For Q equal to or less than 250 gal/day:

$$V = 750 \text{ gallons}$$

2. For Q greater than or equal to 251 gal/day but less than or equal to 350 gal/day:

$$V = 1000 \text{ gallons}$$

3. For Q greater than or equal to 351 gal/day but less than or equal to 500 gal/day:

$$V = 1250 \text{ gallons}$$

4. For Q greater than or equal to 501 gal/day but less than or equal to 1000 gal/day:

$$V = 2.5 Q$$

5. For Q greater than or equal to 1001 gal/day:

$$V = 1,750 + 0.75Q$$

### AEROBIC TREATMENT UNIT SIZING FOR RESIDENCES

Number of Bedrooms/Living Area of Home	Minimum Aerobic Tank Treatment Capacity (gallons per day)
Four bedrooms and < 3,500 sq. ft. or Less than four bedrooms and 2,500 < sq. ft. < 3,501	480
Five bedrooms and < 4,500 sq. ft. or Less than five bedrooms and 3,500 < sq. ft. < 4,501	600
Six bedrooms and < 5,500 sq. ft. or Less than six bedrooms and 4,500 < sq. ft. < 5,501	720
Seven bedrooms and < 7,000 sq. ft. or Less than seven bedrooms and 5,500 < sq. ft. < 7,001	840
Eight bedrooms and < 8,500 sq. ft. or Less than eight bedrooms and 7,000 < sq. ft. < 8,501	960
Nine bedrooms and < 10,000 sq. ft. or Less than nine bedrooms and 8,500 < sq. ft. < 10,001	1,080
Ten bedrooms and < 11,500 sq. ft. or Less than ten bedrooms and 10,000 < sq. ft. < 11,501	1,200
For each additional bedroom above ten or 1,500 additional square feet of living area above 11,500	120

**Table III. Wastewater Usage Rate.**

This table shall be used for estimating the hydraulic loading rates only. Sizing formulas are based on residential strength BOD<sub>5</sub>. Commercial/institutional facilities must pretreat their wastewater to 140 BOD<sub>5</sub> prior to disposal unless secondary treatment quality is required. For design purposes, restaurant wastewater will be assumed to have a BOD<sub>5</sub> of at least 1,200 mg/l after exiting the grease trap or grease interceptor.

**Actual water usage data or other methods of calculating wastewater usage rates may be used by the system designer if it is accurate and acceptable to the Texas Commission on Environmental Quality or its authorized agents. If actual water use records are greater than the usage rates in this table, the system shall be designed for the higher flow.**

TYPE OF FACILITY	USAGE RATE GALLONS/DAY (Without Water Saving Devices)	USAGE RATE GALLONS /DAY (With Water Saving Devices)
Single family dwelling (one or two bedrooms) - less than 1,500 square feet.	225	180
Single family dwelling (three bedrooms) - less than 2,500 square feet.	300	240
Single family dwelling (four bedrooms) - less than 3,500 square feet.	375	300
Single family dwelling (five bedrooms) - less than 4,500 square feet.	450	360
Single family dwelling (six bedrooms) - less than 5,500 square feet.	525	420
Greater than 5,500 square feet, each additional 1,500 square feet or increment thereof.	75	60
Condominium or Townhouse (one or two bedrooms)	225	180
Condominium or Townhouse (each additional bedroom)	75	60
Mobile home (one or two bedrooms)	225	180
Mobile home (each additional bedroom)	75	60
Country Clubs (per member)	25	20
Apartment houses (per bedroom)	125	100
Boarding schools (per room capacity)	50	40
Day care centers (per child with kitchen)	25	20
Day care centers (per child without kitchen)	15	12
Factories (per person per shift)	15	12
Hospitals (per bed)	200	160
Hotels and motels (per bed)	75	60
Nursing homes (per bed)	100	80
Laundries (self service per machine)	250	200
Lounges (bar and tables per person)	10	8

Movie Theaters (per seat)	5	4
Office buildings (no food or showers per occupant)	5	4
Office buildings (with food service per occupant)	10	8
Parks (with bathhouse per person)	15	12
Parks (without bathhouse per person)	10	8
Restaurants - minimum effluent BOD <sub>5</sub> quality described above this table		
Restaurants (per seat)	35	28
Restaurants (fast food per seat)	15	12
Schools (with food service & gym per student)	25	20
Schools (without food service)	15	12
Service stations (per vehicle)	10	8
Stores (per washroom)	200	160
Swimming pool bathhouses (per person)	10	8
Travel trailer/RV parks (per space)	50	40
Vet clinics (per animal)	10	8
Construction sites (per worker)	50	40
Youth camps (per camper)	30	24

Figure: 30 TAC §285.91(10)

Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

TO						
FROM	Tanks	Soil Absorption Systems, & Unlined ET Beds	Lined Evapotranspiration Beds	Sewer Pipe With Watertight Joints	Surface Application (Edge of Spray Area)	Drip Irrigation
Public Water Wells <sup>2</sup>	50	150	150	50	150	150
Public Water Supply Lines <sup>2</sup>	10	10	10	10	10	10
Wells and Underground Cisterns	50	100	50	20	100	100
Private Water Line	10	10	5	10 <sup>5</sup> except at connection to structure	No separation distances	10
Wells Completed in accordance with 16 TAC §76.1000(a)(1)	50	50	50	20	50	50
Streams, Ponds, Lakes, Rivers, Creeks (Measured	50	75	50	20	50	25 when R <sub>a</sub> < 0.1 75 when R <sub>a</sub> > 0.1



From Normal Pool Elevation and Water Level); Salt Water Bodies (High Tide Only); Retention Ponds/Basin (Spillway elevation)		LPD with secondary treatment & disinfection - 50				(With Secondary Treatment & Disinfection - 50)
Foundations, Buildings, Surface Improvements, Property Lines, Swimming Pools, and Other Structures	5	5	5	5	5	No Separation Distances Except <sup>4</sup> : Property Lines - 5
						No Separation Distances Except: Property lines - 20 <sup>6</sup> Swimming Pools - 25
						May spray to edge of easement, but not into. Sprinkler heads must be 1 foot from easement edge
						1
						1
						1
						1
						1
Underground Easements						

Overhead Easements	None With permission from easement holder	None With permission from easement holder	None With permission from easement holder	None With permission from easement holder	None With permission from easement holder	None With permission from easement holder
Slopes Where Seeps may Occur, drainage easements and detention ponds	5	25	5	10	10	10 when $R_a < 0.1$ 25 when $R_a > 0.1$
Edwards Aquifer Recharge Features (See Chapter 213 of this title relating to Edwards Aquifer) <sup>3</sup>	50	150	50	50	150	100 when $R_a < 0.1$ 150 when $R_a > 0.1$

1. All distances measured in feet, unless otherwise indicated.

2. For additional information or revisions to these separation distances, see Chapter 290 of this title (relating to Public Drinking Water).

3. No OSSF may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone.

4. Drip irrigation lines may not be placed under foundations.

5. Private water line/wastewater line crossings should be treated as public water line crossings, see Chapter 290 of this title (relating to Public Drinking Water).

6. Separation distance may be reduced to 10 feet when sprinkler operation is controlled by commercial timer. See §285.33(d)(2)(G)(i).

Figure: 30 TAC §285.91(12)

**Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.**

SYSTEM DESCRIPTION	Maintenance /Affidavit Required	Maintenance Activities Required	Testing and Reporting Requirements <sup>2,4</sup>
Septic Tank & Absorptive Drainfield	No	See §285.39	No
Septic Tank & ET Drainfield (Unlined)	No (3)	See §285.39	No
Septic Tank & ET Drainfield (Lined)	No (3)	See §285.39	No
Septic Tank & Pumped Drainfield	No	See §285.39	No
Septic Tank & Leaching Chamber	No	See §285.39	No
Septic Tank & Gravelless Pipe	No	See §285.39	No
Septic Tank & Low Pressure Dosing	No	See §285.39	No
Septic Tank & Absorptive Mounds	No	See §285.39	No
Septic Tank & Soil Substitution	No	See §285.39	No
Septic Tank, Secondary Treatment, Filter & Surface Application	Yes	Entire OSSF	Test & Report
Secondary Treatment & Standard Absorptive Drainfields	Yes	Treatment System	Report
Secondary Treatment & ET Drainfield	Yes	Treatment System	Report
Secondary Treatment & Leaching Chamber	Yes	Treatment System	Report
Secondary Treatment & Gravelless Pipe	Yes	Treatment System	Report
Secondary Treatment, Filter & Drip Emitter	Yes	Entire OSSF	Report
Secondary Treatment & Low Pressure Dosing	Yes	Treatment System	Report
Secondary Treatment & Absorptive Mounds	Yes	Treatment System	Report
Secondary Treatment & Surface Application	Yes	Entire OSSF	Test and Report
Any Other Treatment System	(1)	(1)	(1)
Any Other Subsurface Disposal System	(1)	(1)	(1)
Any Other Surface Disposal System	Yes	(1)	(1)
Non-Standard Treatment and Surface Application	Yes	Entire OSSF	Test and Report (1)
Holding Tank	Yes	Pump tank as needed	Keep pump records

(1) Determined by the permitting authority based upon review required by §285.5(b) of this title (relating to Submittal Requirements for Planning Materials).

(2) Requirements for Planning Materials). Testing criteria and reporting frequency for those systems not covered under (1) shall be according to §285.91(4) of this title.

(3) Required if design Q is less than required by §285.91(3) of this title.

(4) Not required if the homeowner maintains the system.

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Ark-Tex Council of Governments

### Request for Qualifications

The Ark-Tex Council of Governments (ATCOG) is seeking written quotes from qualified parties desiring to conduct a computer modeling study on Wright Patman Lake. (See Project Overview/Background below or contact Paul Prange to obtain Scope of Work.)

**BACKGROUND:** The Environmental Resource Planner's Office of ATCOG is currently under contract with the Texas Commission on Environmental Quality (TCEQ) to perform a computer modeling study on Wright Patman Lake, which is located between Bowie County and Cass County in the State of Texas. The focus of this study will be on low dissolved oxygen (DO) levels and high and low pH levels within the lake. ATCOG is seeking a contract with qualified, experienced individuals or companies to perform a computer modeling study to be completed before August 31, 2009. TCEQ has allocated approximately \$85,000 for the contractual budget on this project.

**PERFORMANCE PERIOD:** All tasks and deliverables must be completed prior to the specified reporting periods listed in the scope of work.

**SUBMISSION OF QUOTES:** All quotes must be received no later than 5:00 p.m., Friday, April 25, 2008, with no exceptions. Quotes may be mailed, faxed, or hand-delivered to:

Paul Prange, Environmental Resource Planner

Ark-Tex Council of Governments

4808 Elizabeth Street

Texarkana, Texas 75503

Phone: (903) 832-8636

Fax: (903) 832-3441

Quotes must be submitted on the Request for Quote Response Form and be signed by an authorized representative of the interested party.

## REQUEST FOR QUOTE RESPONSE FORM

NAME OF RESPONDER \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_

AUTHORIZED REPRESENTATIVE \_\_\_\_\_

1. Brief description of the vendor's organization, including history and names of individuals who are a part of the organization:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. References: List three (3) entities below that vendor has provided similar services. Include contact persons and phone numbers.

Name of Entity	Contact Person	Phone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Price Quote for providing Wright Patman Lake Study: \$ \_\_\_\_\_

(Below or on the back of this form list a breakdown of what quote includes)

This quote shall be good through 4/15/2008.

\_\_\_\_\_  
Signature Authorized Representative

\_\_\_\_\_  
Date

This request for quotes proposal does not commit ATCOG to award a contract, to pay any cost incurred in the preparation of a quote for this request, or to procure services or supplies. ATCOG reserves the right to accept or reject any and all quotes as a result of this request, and to award the quote considered most advantageous to the ATCOG.

**EVALUATION OF QUOTE:** Quotes will be evaluated upon: (1) recent demonstrated experience in computer modeling; and (2) price.

Questions concerning the contents of this Request for Qualifications or questions of a general nature may be directed to **Paul Prange, (903) 832-8636**.

**PROJECT OVERVIEW/BACKGROUND:** Wright Patman Lake is an impoundment of the Sulphur River Basin located eleven miles southwest of Texarkana in Bowie and Cass counties, Texas. This 50-year old reservoir (Segment 302) was included in the draft 2006 Texas 303(d) List of impaired water bodies because of depressed levels of dissolved oxygen (DO) in the upstream portion of the reservoir and because of high and low pH and depressed DO in the downstream portion of the reservoir near the reservoir's dam. Despite appearing on every 303(d) list compiled by the State of Texas since 1996, uncertainty regarding the observed non-attainment of state DO and pH criteria has delayed the development of a Total Maximum Daily

Load (TMDL) for the reservoir. One of the factors that has contributed to this uncertainty is the possibility that the occasional low DO and high and low pH levels observed in the reservoir may be the result of physical and biogeochemical conditions characteristic of shallow reservoirs located in vegetated, sub-temperate environments, such as those found in the east Texas region. The results of a preliminary review of available water quality and physiographic data suggest that Wright Patman Lake suffers from eutrophication which may be linked to a number of factors, including external phosphorus loading, internal nutrient cycling, and "reservoir aging". In response to these conditions, the TCEQ has initiated an effort to investigate the causes of low DO and high and low pH in Wright Patman Lake and to develop a strategy to bring the lake into compliance with Texas Surface Water Quality Standards.

The TCEQ and other organizations continue to collect additional data to further characterize the reservoir as part of ongoing surface water monitoring programs. However, in order to gain a detailed understanding of the relative influences of the factors involved in the occurrence of low DO and high and low pH in the reservoir, it is helpful to simulate the physical and biogeochemical processes associated with the lake's aquatic environment. This scope of work describes the tasks to be undertaken by the ARK-TEX Council of Governments (ARK-TEX COG) to produce a model of Wright Patman Lake capable of simulating, in detail, the current hydrodynamic and water quality conditions in the lake and conditions resulting from the implementation of proposed mitigation measures. ARK-TEX COG will use the model to develop recommendations for addressing the low DO and high and low pH levels observed in the reservoir.

TRD-200801547  
L.D. Williamson  
Executive Director  
Ark-Tex Council of Governments  
Filed: March 21, 2008

## Brazos Valley Council of Governments

### Request for Proposals

Purchasing Solutions Alliance (PSA), acting on behalf of the Brazos Valley Council of Governments (BVCOG) and its Members, is soliciting proposals for Office Supplies, Furnishings, Computer Supplies and Printing Services. Sealed proposals for Request for Proposals (RFP) #08-100 will be accepted until 2:00 p.m., Tuesday, April 8, 2008. Any proposal received after the above closing time will be returned unopened. Sealed proposals must be delivered to:

Roger D. Dempsey, C.P.M., A.P.P., Program Manager  
Purchasing Solutions Alliance  
3991 East 29th St.  
Bryan, Texas 77802  
Telephone: (979) 595-2801 Ext. 2034  
Email: [rdempsey@bvcog.org](mailto:rdempsey@bvcog.org)  
Website: [www.psabuy.org](http://www.psabuy.org)

Specifications, Scope of Services and Information for Offerors is on file and may be examined at the address listed above. These documents are also available online at: [http://www.psabuy.org/index.php?option=com\\_content&task=view&id=33&Itemid=45](http://www.psabuy.org/index.php?option=com_content&task=view&id=33&Itemid=45).

A non-mandatory pre-proposal conference is scheduled at 10:00 a.m. CST, Friday, March 28, 2008 in the Robertson Conference Room lo-

cated in the Purchasing Solutions Alliance Office at 3991 East 29th St., Bryan, Texas. All potential offerors are invited to attend.

PSA believes that the data contained in these specifications is sufficient for the preparation of proposals. Requests for additional information will be considered depending on the RFP time frame and the availability of the requested information. Such information will be submitted to all known Offerors simultaneously. All questions related to this RFP shall be addressed in writing. Questions must be submitted in writing (via e-mail) to the individual identified above prior to 5:00 p.m., CST, Wednesday, April 2, 2008.

TRD-200801517  
Roger D. Dempsey  
Manager, Purchasing Solutions Alliance  
Brazos Valley Council of Governments  
Filed: March 19, 2008

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 14, 2008, through March 20, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 26, 2008. The public comment period for this project will close at 5:00 p.m. on April 25, 2008.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Port of Houston Authority;** Location: The project is located at Barbours Cut (off Houston Ship Channel) at 1515 East Barbours Cut Boulevard, in La Porte, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: La Porte, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 305847; Northing: 3284990. Project Description: The applicant proposes to deepen an existing dock to 47 feet MLT. The wharf frontage will be dredged approximately 9,500 feet by 150 feet wide. The dredge material will be placed in Spilman Island placement area. An estimated 280,500 cubic yards of water bottom material will be removed. The purpose is to accommodate deeper draft container ships so as to improve transportation. CCC Project No.: 08-0099-F1. Type of Application: U.S.A.C.E. permit application #SWG-1999-2499 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

**Applicant: Merritt Operating, Inc.;** Location: The project is located adjacent to the area of the Gulf Intracoastal Waterway (GIWW) known as the Land Cut, west of the GIWW, near El Toro Island, in Kenedy County TX. The project can be located on the U.S.G.S. quadrangle map entitled: Maria Estella Well, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 650680; Northing: 2981345. Project Description: The applicant proposes to re-enter and produce 3 previously abandoned oil and gas wells. In order to access

the well sites, the applicant will need to conduct maintenance dredging in approximately 3.65 miles of existing access channel. The dredging would not exceed -6.0 feet Mean Low Water and the bottom cut of the channel would be approximately 50 feet wide and approximately 60 to 75 feet wide at the top of the cut. The channels have partially silted in due to years of non-use. The applicant would use a combination of mechanical and hydraulic dredging and place the discharged material in several placement areas adjacent to the existing channel as depicted in the attached project plans. The applicant will contain the runoff with the existing levees and silt fences. The applicant estimates that the volume of dredged material would not exceed 30,000 cubic yards of sand. CCC Project No.: 08-0100-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00092 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [tammy.brooks@glo.state.tx.us](mailto:tammy.brooks@glo.state.tx.us). Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200801585

Larry L. Laine

Chief Clerk/Deputy Commissioner, General Land Office

Coastal Coordination Council

Filed: March 26, 2008

## Office of Consumer Credit Commissioner

### Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in Texas Finance Code §341.203.<sup>1</sup>

The amounts of brackets in Texas Finance Code §342.201(a) are changed to \$1,800.00 and \$15,000.00, respectively.

The amounts of brackets in Texas Finance Code §342.201(e) are changed at \$3,000.00, \$6,300.00, and \$15,000.00, respectively.

The ceiling amount in Texas Finance Code §342.251 and §342.259 are changed to \$600.00 and \$1,200.00, respectively.

The amounts of the brackets in Texas Finance Code §345.055 are changed to \$3,000.00 and \$6,000.00, respectively.

The amounts of the bracket in Texas Finance Code §345.103 is changed to \$3,000.00.

The ceiling amount of Texas Finance Code §371.158 is changed to \$15,000.00.

The amounts of the brackets in Texas Finance Code §371.159 are changed to \$180.00, \$1,200.00, and \$1,800.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2008, and extending through June 30, 2009.

<sup>1</sup>Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2007 Index = 612.948. The percentage of change is 603.30%. This equates to an increase of 600% after disregarding the percentage of change in excess of multiples of 10%.

TRD-200801562

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 24, 2008

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/31/08 - 04/06/08 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/31/08 - 04/06/08 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200801561

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 24, 2008

## Commission on State Emergency Communications

### Notice of Workshop Regarding the Equalization Surcharge

The Commission on State Emergency Communications (CSEC) will hold a workshop regarding the ability of the equalization surcharge to maintain a consistent level of 9-1-1 service across the state and support a viable poison control program. The workshop will be held on **Tuesday, April 8, 2008, at 10:00 a.m., at the William P. Hobby Building, Room 100, Austin, Texas.** Check in at the main entrance desk for access.

The workshop agenda is as follows:

- I. Welcoming Remarks by CSEC Staff
- II. Review Filed Comments to the Questions
- III. Oral Replies to Questions
- IV. Open Discussion
- V. Closing

For further information, including questions to be addressed at the workshop, workshop updates, and filed comments, please go to the *What's New* section of CSEC's website ([www.911.state.tx.us](http://www.911.state.tx.us)).

Written comments may be filed electronically by submitting them to [csecinfo@csec.state.tx.us](mailto:csecinfo@csec.state.tx.us) or by mailing them to CSEC, c/o Elizabeth Smith, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942. Please include in the subject line "Comments for Equalization Surcharge Workshop." The deadline for submitting written comments is Monday, April 7, 2008 at 5:00 p.m.

Persons planning on participating in the workshop, please register by contacting Elizabeth Smith at (512) 305-6928 or elizabeth.smith@csec.state.tx.us. Hearing and speech-impaired individuals with a telecommunications device for the deaf may contact CSEC at (512) 305-6925.

Questions concerning the workshop or this notice should be referred to Elizabeth Smith at (512) 305-6928 or elizabeth.smith@csec.state.tx.us.

NOTE: CSEC will not be broadcasting the workshop or allowing telephonic participation.

TRD-200801598

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: March 26, 2008



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 5, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 5, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: American Plant Food Corporation; DOCKET NUMBER: 2007-1732-WQ-E; IDENTIFIER: RN102564333; LOCATION: Wortham, Freestone County, Texas; TYPE OF FACILITY: fertilizer mixing; RULE VIOLATED: 30 Texas Administrative Code (TAC) §281.25(a)(4) and 40 Code of Federal Regulations, §122.21(c), by failing to obtain authorization to discharge storm water associated with industrial activities; and the Code, §26.121(a), by failing to prevent an unauthorized discharge of fertilizer and storm water that had come into contact with bulk agricultural chemicals; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512)

239-2134; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Armortex, Inc.; DOCKET NUMBER: 2007-1560-AIR-E; IDENTIFIER: RN104444526; LOCATION: Schertz, Guadalupe County, Texas; TYPE OF FACILITY: fiberglass resin plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 74195, Special Condition (SC) Numbers 11(A)(1) (formerly SC Number 8(B)(1)), 11(B)(1) and (2) (formerly SC Number 8(B)(2)), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain air contaminant emission records; 30 TAC §116.115(b)(2)(F), Air Permit Number 74195, General Condition Number 8 (Air Permit dated May 16, 2005), and THSC, §382.085(b), by failing to maintain emission rates below the maximum allowable emission rates required by Air Permit Number 74195; 30 TAC §116.115(c), Air Permit Number 74195, SC Number 5 (Air Permit dated May 16, 2005), and THSC, §382.085(b), by failing to keep all doors closed during the application of polyester resin; and 30 TAC §116.115(c), Air Permit Number 74195, SC Number 8A (Air Permit dated April 18, 2007), and THSC, §382.085(b), by failing to operate a bag house with maximum pressure drop of five inches of water; PENALTY: \$32,730; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Babin Machine Works, Inc.; DOCKET NUMBER: 2008-0348-WQ-E; IDENTIFIER: RN100569425; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Kerry Charles Brown; DOCKET NUMBER: 2008-0358-WOC-E; IDENTIFIER: RN105388318; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupation license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(5) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2007-1861-AIR-E; IDENTIFIER: RN100825249; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 22690, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$4,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Eggemeyer Land Clearing, LLC; DOCKET NUMBER: 2008-0106-MLM-E; IDENTIFIER: RN105053946; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: portable grinding operation; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization from the TCEQ prior to engaging in activities in which air pollutants are emitted; and 30 TAC §332.8(b)(3) and (4), by failing to operate a grinder that is equipped with low-velocity fog nozzles and by failing to have a water or mechanical dust suppression system available for the grinding operation; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.



(7) COMPANY: El Paso County; DOCKET NUMBER: 2007-1917-AIR-E; IDENTIFIER: RN100819192 and RN105016646; LOCATION: El Paso and Fabens, El Paso County, Texas; TYPE OF FACILITY: county government road maintenance stations; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with a minimum of 2.7% by weight oxygenated fuel requirement; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2007-1658-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refining plant; RULE VIOLATED: 30 TAC §116.1520(c) and THSC, §382.085(b), by failing to submit a completed best available retrofit technology analysis; PENALTY: \$40,950; Supplemental Environmental Project (SEP) offset amount of \$16,380 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: City of Fairfield; DOCKET NUMBER: 2007-2000-PWS-E; IDENTIFIER: RN101231660; LOCATION: Fairfield, Freestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences and establishments where an actual or potential contamination hazard exists; and 30 TAC §290.42(j), by failing to use an approved chemical or media that conforms to American National Standards Institute/National Sanitation Foundation standards for indirect additives; PENALTY: \$712; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Hardin County; DOCKET NUMBER: 2007-1745-MSW-E; IDENTIFIER: RN101692564 and RN104806344; LOCATION: Lumberton, Hardin County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$6,060; Supplemental Environmental Project (SEP) offset amount of \$4,848 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Hooks Mobile Home Park, Ltd.; DOCKET NUMBER: 2007-2020-MWD-E; IDENTIFIER: RN102177698; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12083-001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total ammonia nitrogen; PENALTY: \$1,650; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Katy Sun Parks, Ltd.; DOCKET NUMBER: 2007-1834-PWS-E; IDENTIFIER: RN101229748; LOCATION: Katy, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power to deliver water at a rate of 0.35 gallons per minute (gpm) per connection to the distribution system; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's pressure tank annually; 30 TAC §290.121(a), by failing to develop and main-

tain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump house; 30 TAC §290.43(c)(8), by failing to maintain the facility's pressure tank in accordance with America Water Works Association (AWWA) standards; 30 TAC §290.46(m)(6), by failing to maintain service pump number 1 at the well site in good working condition; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation for all enclosures in which gas chlorine is being stored or fed; and 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tank annually; PENALTY: \$3,350; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Millennium Petrochemicals Inc.; DOCKET NUMBER: 2007-1918-AIR-E; IDENTIFIER: RN100224450; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 4751, SC Number 6, and THSC, §382.085(b), by failing to prevent a pin-hole leak on a pipe; PENALTY: \$5,525; Supplemental Environmental Project (SEP) offset amount of \$2,210 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red (FTIR) Project; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: City of Needville; DOCKET NUMBER: 2007-1955-MWD-E; IDENTIFIER: RN103016408; LOCATION: Needville, Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010343001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids, total ammonia nitrogen, and flow; PENALTY: \$5,100; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: City of Point; DOCKET NUMBER: 2007-1595-PWS-E; IDENTIFIER: RN101391407; LOCATION: Point, Rains County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(2)(C), TCEQ Agreed Order Docket Number 2001-0499-PWS-E, Ordering Provision 2.b., and THSC, §341.0315(c), by failing to provide a minimum transfer pump capacity of 0.6 gpm per connection; 30 TAC §290.43(c)(8), §290.43(c)(2) and (c)(3), by failing to design, construct, and/or maintain all tanks in strict accordance with AWWA standards; 30 TAC §290.45(b)(2)(A) and THSC, §341.0315(c), by failing to provide a raw water pump capacity of 0.6 gpm per connection; 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change or addition to the system's pressure facilities; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(s)(1), by failing to calibrate flow measuring devices and rate-of-flow controllers at least once every 12 months; 30 TAC §290.112(e)(1), by failing to submit total organic carbon reports; 30 TAC §290.121, by failing to develop and maintain up-to-date chemical and microbiological monitoring plans; and 30 TAC §290.46(f)(3)(E)(iv), by failing to keep on file completed customer service inspection reports; PENALTY: \$6,608; ENFORCEMENT COORDINATOR: Christopher Keffer,

(512) 239-5610; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: REE Holding, Inc. dba Tool Tech; DOCKET NUMBER: 2008-0323-WQ-E; IDENTIFIER: RN102953296; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Southwest-Tex Leasing Company, Inc.; DOCKET NUMBER: 2007-1899-AIR-E; IDENTIFIER: RN100967777; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: car and truck rental leasing company; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline; PENALTY: \$1,020; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(18) COMPANY: Texas Port Recycling LP; DOCKET NUMBER: 2008-0008-AIR-E; IDENTIFIER: RN101474955; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: automobile and metal shredding plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or meet the conditions of a Permit by Rule for the construction and operation of a shredder; PENALTY: \$900; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: The Premcor Refining Group Inc.; DOCKET NUMBER: 2007-1455-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §101.201(a)(2)(F) and §122.143(4), Federal Operating Permit (FOP) O-1498, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to properly report an emissions event; 30 TAC §116.115(c) and §122.143(4), FOP O-1498, GTC, SC 18A, Air Permit 7600A, SC 1, and THSC, §382.085(b), by failing to properly operate tank 283 and tank 284; and 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.715(a), 116.715(c)(7), and 122.143(4), FOP O-1498, GTC, SC 18A, Air Permits 6825A/PSD-TX-49, SC 5A, and 7600A, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$64,641; Supplemental Environmental Project (SEP) offset amount of \$32,320 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: City of Wills Point; DOCKET NUMBER: 2007-1573-MWD-E; IDENTIFIER: RN102852514; LOCATION: Van Zandt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$18,600; Supplemental Environmental Project (SEP) offset amount of \$14,880 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200801569

Mary R. Risner  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: March 25, 2008

◆        ◆        ◆

## Notice of Completion of Technical Review Proposed Radioactive Material License

For the Period of March 24, 2008.

Waste Control Specialists LLC, 1 mile north of S.H. 176 at NW9998 on State Line Road, Andrews, Texas, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment of Radioactive Material License No. R04971. Radioactive Material License No. R04971 authorizes radioactive waste processing and storage. The amendment application requests a change in the Radiation Safety Officer (RSO) and to authorize wipe tests to satisfy the confirmatory sampling requirements for sealed sources containing special nuclear material (SNM) required by the Nuclear Regulatory Commission under Docket No. 70-7005.

The TCEQ Executive Director has completed the technical review of the amendment request and prepared an amended draft license. The draft license 1) authorizes the change in RSO from Guy Crawford, Ph.D. to Tim Greene, 2) grants a one time exemption, to expire within 2 weeks of receipt of the sealed sources described in the letters from WCS dated August 7, 2007 and September 21, 2007, to allow wipe tests of the surface of special nuclear material sealed sources to satisfy the confirmatory sampling requirements, 3) changes the authority of the license and its format from the Department of State Health Services to the TCEQ, 4) removes the administrative renewal conditions (not required for TCEQ permits), 5) imposes fingerprinting and criminal history records check requirements for unescorted access to certain radioactive material, 6) changes references to Title 25 of the Texas Administrative Code (TAC) Section (§) 289 to the corresponding reference in Title 30 TAC §336, except for transportation of radioactive material, which remains in 25 TAC §289, 7) removed reference to 25 TAC §289.252(hh) concerning emergency plans since no corresponding reference in 30 TAC §336 was available, and 8) added extra conditions required for all TCEQ permits as stated in 30 TAC §305.125. The license amendment request, the Executive Director's technical summary, and amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews County Library located at 109 Northwest First Street in Andrews, Texas.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments.

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the minor amendment after consideration of all timely comments submitted on the application.

**MAILING LIST.** If you submit public comments, you will be added to the mailing list for this specific license to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the

county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 10 days from the date this notice is published in the *Texas Register* which should be on or about March 28, 2008.

**AGENCY CONTACTS AND INFORMATION.** If you need more information about this license application or the licensing process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Further information may also be obtained from Waste Control Specialists LLC at Three Lincoln Center, 5430 LBJ Freeway, Suite 1700, Dallas, TX 75240 or by contacting Mr. Tim Greene at (888) 789-2783.

TRD-200801588

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2008



### Notice of District Petition

Notices issued March 11, 2008 through March 19, 2008.

TCEQ Internal Control No. 12272007-D02; JM TEXAS LAND FUND NO. 4, L.P. (the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 477 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition was filed with the county clerk in Harris County, pursuant to 30 TAC Section §293.11(d). The petition states the following: (1) the Petitioners are the owner of more than 50% of value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 444.294 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2007-664, effective June 19, 2007, the City of Houston, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$44,510,000.

TCEQ Internal Control No. 02012008-D05; Oaks at San Gabriel, LLC, (Petitioner) filed a petition for creation of West Williamson County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 397.768 acres located in Williamson County, Texas; and (4) the pro-

posed District is within the extraterritorial jurisdiction of the City of Georgetown, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$19,596,198.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200801590

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2008



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 5, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may

withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 5, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Jimmy Kim dba Le Bon Cleaners; DOCKET NUMBER: 2003-1560-IHW-E; TCEQ ID NUMBER: RN100652387; LOCATION: 5821 Kirby Drive, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §§335.62 and §335.504 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct a waste characterization for the two waste streams generated by the dry cleaning machines at the facility; 30 TAC §§335.6(c), 335.9(a)(1)(A)-(G) and (2), and 335.13(i) and 40 CFR §262.40(a), by failing to provide notification of all solid waste activities to the TCEQ, keep records of all hazardous solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal, retain a signed copy of each manifest utilized for the shipment of hazardous waste, and submit the Annual Hazardous Waste Summary; 30 TAC §335.474, by failing to have a Source Reduction and Waste Minimization Plan; 30 TAC §335.69(f)(4)(B) and (f)(5)(A), (C), and (D) and 40 CFR §262.34(d)(4) and (d)(5)(i), (iii), and (iv), by failing to designate an emergency response coordinator, post the required emergency information, ensure that employees are familiar with proper waste handling and emergency procedures and familiarize local response authorities and hospitals with the layout and hazardous wastes handled at the facility; and 30 TAC §335.69(f)(2) and (f)(4)(A) and 40 CFR §262.34(d)(2) and (d)(4), by failing to keep two containers of hazardous waste closed, except when it is necessary to add or remove waste; inspect containers of hazardous waste for leaks and deterioration on a weekly basis; and clearly label or mark two containers of hazardous waste with the words Hazardous Waste or with a start accumulation date; PENALTY: \$18,428; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Thatta Corporation Inc. dba Stop-N-Drive #26; DOCKET NUMBER: 2004-0672-PST-E; TCEQ ID NUMBER: RN102782851; LOCATION: 1096 Alabama Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove an existing underground storage tank (UST) system that was not brought into compliance with upgrade requirements within 60 days of the prescribed implementation date; 30 TAC §334.54(d)(2), by failing to ensure that residue from stored regulated substances which remain in the system did not exceed 2.5 centimeters at the deepest point and did not exceed 0.3% by weight, of the system at full capacity; 30 TAC §334.7(d)(3), by failing to

provide amended registration for any change or additional information regarding the USTs within 30 days of the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition; 30 TAC §334.50(a)(1)(A) and Texas Water Code (TWC), §26.3475(d), by failing to perform release monitoring for the UST system at least once per month; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the UST system; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for Fiscal Years 2003-2004 for TCEQ Financial Administration Account Number 0032113U; PENALTY: \$13,200; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200801566

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 25, 2008

#### ◆ ◆ ◆ Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 5, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 5, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Azman Incorporated dba Shoppers Mart 2; DOCKET NUMBER: 2002-0120-PST-E; TCEQ ID NUMBER: RN101858058; LOCATION: 10102 Homestead, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail fuel sales; RULES VIOLATED: 30 TAC §115.245(1) and Texas Health and Safety Code, §382.085(b), by failing to perform the initial testing of the Stage II vapor recovery system within 30 days of the system's installation; Texas Water Code (TWC), §7.101 and Agreed Order, Docket Number 2002-0522-PST-E, Section IV.1, by failing to complete payment of administrative penalty; and 30 TAC §334.22, by failing to pay annual and associated late underground storage tank (UST) fees for Fiscal Year 2004; PENALTY: \$2,000; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Bountheung Noymany dba Boat Club Grocery; DOCKET NUMBER: 2004-1008-PST-E; TCEQ ID NUMBER: RN100737493; LOCATION: 5300 Boat Club Road, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.33(a) and TWC, §5.702, by failing to pay outstanding UST fees for Financial Administration Account Number 0057899U for Fiscal Years 2005-2007; PENALTY: \$6,750; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Spur Services, Inc. dba Spur Texaco; DOCKET NUMBER: 2004-1825-PST-E; TCEQ ID NUMBER: RN101654119; LOCATION: 4700 Doniphan Drive, El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for TCEQ Account Number 0059962U for Fiscal Years 2004-2005 and associated late fees; and TWC, §7.051 and Agreed Order Docket Number 2001-1186-PST-E, Section IV.1., by failing to pay outstanding Administrative Penalties associated with Agreed Order Docket Number 2001-1186-PST-E, for TCEQ Account Number 23700281; PENALTY: \$3,810; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-200801567

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 25, 2008



#### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 30 and 285

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 30, Occupational Licenses and Registrations and Chapter 285, On-Site Sewage Facilities.

The proposed rules would implement House Bill 2482, 80th Legislature, 2007, Regular Session, address a petition from the Texas Environmental Health Association and revise and update several areas within Chapter 285 and Chapter 30. The proposed rules would address homeowner maintenance of aerobic treatment and disposal systems; develop a new licensing and registration program for persons who maintain aerobic treatment units for compensation; address a petition concerning conflict of interest for designated representatives; clarify siting, design, setback, permitting, and leak testing requirements for on-site sewage facilities; address cluster systems relating to definitions, ownership requirements and utility regulations; amend or create definitions for direct supervision, testing and reporting and maintenance technician, and phase out the definition of maintenance company; and clean up errata and inconsistencies in the rules.

The commission will hold a public hearing on this proposal in Austin on April 29, 2008 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-033-285-CE. The comment period closes May 5, 2008. Copies of the proposed rules can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Joseph L. Strouse, P.E., Compliance Support Division, at (512) 239-6003.

TRD-200801535

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 21, 2008



#### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 328

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding the proposed amendment to 30 TAC Chapter 328, Waste Minimization and Recycling.

The proposed rulemaking would implement House Bill 2541, 80th Legislature, Regular Session, 2007. The proposed rulemaking would establish requirements for non-permitted and non-registered municipal solid waste recyclers that store combustible material for producing mulch or compost located in certain counties. At present, Bexar County is the only county affected by this legislation. These new requirements would prescribe time limits for processing and removing materials from the facility; limit the amount of combustible materials stored; limit the size of piles; require fire lanes; require buffer zones from the facility boundary; and establish more stringent standards for

these same facilities that are located on the recharge or transition zone of a sole source aquifer. These new requirements must not become effective until the first anniversary of the date the rule is adopted.

A public hearing on this proposal will be held in San Antonio on April 28, 2008, at 2:00 p.m., at the Alamo Area Council of Governments, 8700 Tesoro Drive, Al J. Notzon Board Room #100. The hearing will be structured for the receipt of oral or written comments. Registration begins 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established to assure enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available for discussion 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing, who have special communication or other accommodation needs, should contact the Commission's Office of Public Assistance at (512) 239-4000. Requests should be made as far in advance as possible.

Comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-044-328-PR. The comment period closes May 5, 2008. To view rules, please visit [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information or questions concerning this proposal, please contact Wayne Harry, Municipal Solid Waste Permits Section, at (512) 239-6619.

TRD-200801545

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 21, 2008



#### Notice of Request for Nominations for the Texas Commission on Environmental Quality Water Utility Operator Licensing Advisory Committee

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for five individuals to serve on the TCEQ Water Utility Operator Licensing Advisory Committee (the Committee). The Committee membership represents various geographic areas of the state, ethnicity, businesses, governments, associations, and industries. If you have served on this advisory committee or nominated someone or self-nominated in the past, you may do so again. When members' terms expire, the committee representation changes and individuals with varying backgrounds and geographic locations are needed each time.

The authority for the committee is found in 30 TAC Chapter 5. The objectives of the 13-member committee are: 1) to review training and educational material to promote quality education and training; 2) to review Job Analysis exam validations and to advise and assist regarding licensing requirements; 3) to assist with the review of rules, regulations, guidance documents, and policy statements; 4) to represent a diversity of viewpoints; 5) and to promote interaction with outside organizations.

These five appointments will be made by the TCEQ commissioners and will be for four-year terms, beginning September 1, 2008. The committee meets as needed, usually four times a year. Meetings are held

at the TCEQ offices located at 12100 Park 35 Circle in Austin, Texas, and last approximately 2 - 4 hours. No financial compensation is available. Additional information regarding the Committee is available at the following web site: [http://www.tceq.state.tx.us/compliance/compliance\\_support/licensing/wuoc\\_comm.html](http://www.tceq.state.tx.us/compliance/compliance_support/licensing/wuoc_comm.html).

To nominate an individual or to self-nominate, submit a resume of the nominee, including work history, dates of employment, job titles and duties, educational background, professional licenses held, and dates of past and current memberships on TCEQ committees, councils and work groups and a letter from the nominee indicating his/her agreement to serve, if appointed, and indicating that he/she has employer approval to serve, if required.

**Nominations must be received at TCEQ by 5:00 p.m., on April 25, 2008.** Nominations may be **mailed** to Juanita Lopez, Compliance Support Division, MC 178, Texas Commission on Environmental Quality, P.O. Box 13087, Austin Texas 78711-3087. Nominations may also be **faxed** to Ms. Lopez at (512) 239-6272 or sent by **email** to [jlopez@tceq.state.tx.us](mailto:jlopez@tceq.state.tx.us).

Questions regarding the committee can be directed to Ms. Lopez at (512) 239-6139 or to Noreen Helmle at (512) 239-3918 or [nhelmle@tceq.state.tx.us](mailto:nhelmle@tceq.state.tx.us).

TRD-200801564

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 25, 2008



#### Notice of Request for Public Comment and Notice of a Public Meeting for One Total Maximum Daily Load

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment one draft total maximum daily load (TMDL) for bacteria in the Leon River Below Proctor Lake (Segment 1221) of the Brazos River Basin, located in Comanche, Hamilton, and Coryell Counties. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for bacteria in the Leon River Below Proctor Lake (Segment 1221). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site. The TMDL will then be submitted to EPA Region 6 for approval. Upon approval, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on **April 17, 2008, 7:00 p.m., at the Hamilton County Courthouse, 102 North Rice, Hamilton, Texas 76531**. At this meeting individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments should be submitted to Kerry Niemann, Water Programs Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by **5:00 p.m., May 5, 2008**, and should reference, *One Total Maximum Daily Load for Bacteria in the Leon River Below Proctor Lake, for Segment Number 1221*. For further information regarding the draft TMDL, please contact Kerry Niemann, Water Programs Division, at (512) 239-0483 or [kniemann@tceq.state.tx.us](mailto:kniemann@tceq.state.tx.us). Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: <http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html> or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200801565

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 25, 2008



## Notice of Water Quality Applications

The following notices were issued during the period of March 6, 2008 through March 17, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE**.

### INFORMATION SECTION

ARAMARK UNIFORM AND CAREER APPAREL LLC which operates a groundwater treatment system which was formerly and industrial laundry and dry cleaning facility, has applied for a renewal of TPDES Permit No. WQ0004575000, which authorizes the discharge of treated groundwater at a daily average flow not to exceed 14,400 gallons per day via Outfall 001. The facility is located at 8302 Market Street Road at the intersection of Market Street Road and Port Houston Street in the City of Houston, Harris County, Texas.

CEDARSTONE ONE INVESTORS LTD has applied for a renewal of TPDES Permit No. WQ0013697001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The facility is located on the front parking lot of Cedarstone Commercial Complex, on the north side of Sawdust Road, approximately one-tenth of a mile of the intersection of Sawdust Road and Sawmill Road in the Woodlands in Montgomery County, Texas.

CITY OF DEER PARK has applied for a renewal of TPDES Permit No. WQ0010519002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located approximately 800 feet south of State

Highway 225 and approximately 3000 feet east of Center Street within the City limits of the City of Deer Park in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495151, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 1-1/8 miles west southwest of the intersection of Interstate Highway 45 and State Highway 249; approximately 1400 feet southwest of the intersection of Stuebner-Airline Road and State Highway 249 in Harris County, Texas.

CITY OF POTEET has applied for a renewal of TPDES Permit No. WQ0013630001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 640,000 gallons per day. The facility is located approximately 9,500 feet southeast of the intersection of State Highway 16 and State Highway 476 in the southern section of the City of Poteet in Atascosa County, Texas.

FAULKLEY GULLY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011832001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,420,000 gallons per day. The facility is located at 15503 Hermitage Oak, north of Louetta Road and west of State Highway 249, east of North Eldridge Parkway in Harris County, Texas.

GALILEO MOUNT HOUSTON TX LP has applied for a renewal of TPDES Permit No. WQ0014144001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located at 4918 Orange Grove, approximately 680 feet north of the intersection of U.S. Highway 59 and Mount Houston Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 8 has applied for a renewal of TPDES Permit No. WQ0011727001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 835,000 gallons per day. The facility is located at 555 Normandy Street, just south of the intersection of Normandy Street and Woodforest Boulevard in Harris County, Texas.

HOUSTON METRO RV PARK INC has applied for a renewal of TPDES Permit No. WQ0012617001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 1719 Gault Road, approximately 1,200 feet west of the intersection of Gault Road and Aldine-Westfield Road in Harris County, Texas.

LUNINANT GENERATION COMPANY which operates the Comanche Peak Nuclear Power Plant, an electric generating station, has applied for a renewal of TPDES Permit No. WQ0001854000, which authorizes the discharge of once-through cooling and auxiliary cooling water and previously monitored effluents at a daily average flow not to exceed 3,168,000,000 gallons per day via Outfall 001; water from the Safe Shutdown Impoundment (containing cooling water, low volume wastes (service water), and storm water runoff) on an intermittent and flow variable basis via Outfall 002; treated sanitary sewage effluent on flow variable basis via Outfall 003; low volume wastewater and previously monitored effluents on an intermittent and flow variable basis via Outfall 004; and waters contained in Squaw Creek Reservoir on an intermittent and flow variable basis via Outfall 005. The facility is located at 6322 North Farm-to-Market Road 56, on the west side of Squaw Creek Reservoir along State Highway 56, approximately four and one half (4.5) miles northwest of the City of Glen Rose, Somervell County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 88 has applied for a renewal of TPDES Permit No. WQ0014523001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility

will be located approximately 7,200 feet northeast of the intersection of Rayford Road and Riley Fuzzel Road in Montgomery County, Texas.

MONUMENT INN INC has applied for a renewal of TPDES Permit No. WQ0013666001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day. The facility is located approximately 150 feet due east of State Highway 134, 4,100 feet due north of the San Jacinto Monument and 400 feet due south of the Houston Ship Channel in Harris County, Texas.

RICE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014846001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility will be located 2 miles west of the intersection of Highway 90 and Highway 71 in Altair in Colorado County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014854001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day. TCEQ received this application on September 25, 2007. The facility will be located approximately 2.8 miles southeast of the intersection of State Highway 14 and Interstate Highway 45 (IH-45), south of Richland in Navarro County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801586

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2008



### Notice of Water Quality Applications

The following notices were issued during the period of March 13, 2008 through March 26, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

### INFORMATION SECTION

ATCO VALLEY PLAZA LLC which operates Atco Industrial Park, has applied for a new permit, proposed Permit No. WQ0004839000, to authorize the disposal of treated domestic wastewater and storm water at a daily average flow not exceed 10,000 gallons per day via evaporation and irrigation of seven acres of bermuda grass at a hydraulic application rate of 1.60 acre-feet/acre/year. This permit will not authorize a discharge of pollutants into water in the State.

BLUEBONNET INVESTORS has applied for a renewal permit, consideration of the application by Bluebonnet Investors for renewal of, and conversion to an individual permit, State Registration No. WQ0003286000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy facility

at a maximum capacity of 500 head, of which 500 head are milking cows. The facility is located on the north side of County Road 251 approximately eight tenths (0.80) mile west of the intersection of County Road 251 and Farm-to-Market Road 914. The intersection is located approximately three and one half (3.5) miles south of the intersection of US Highway 67 and Farm-to-Market Road 914 in Stephenville, Erath County, Texas.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO 30 has applied for a renewal of TPDES Permit No. WQ0014461001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located along the north side of State Highway 6, approximately 3,500 feet east of the intersection of State Highway 288 and State Highway 6 in Brazoria County, Texas

BRUNI RURAL WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013924001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 62,500 gallons per day. The facility is located at the east end of 16th Street, approximately one mile northeast of the intersection of State Highway 359 and Farm-to-Market Road 2050 in the community of Bruni in Webb County, Texas.

CITY OF CLEVELAND has applied for a renewal of TPDES Permit No. WQ0010766001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located south of State Highway 105, approximately 0.5 mile west of the intersection of State Highway 105 and U.S. Highway 59 in Liberty County, Texas.

CITY OF CLIFTON has applied for a renewal of TPDES Permit No. WQ0010043001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located on the west bank of the Bosque River immediately south of Farm-to-Market Road 219, on the east side of the City of Clifton in Bosque County, Texas.

CITY OF CUSHING has applied for a renewal of TPDES Permit No. WQ0010437001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 81,000 gallons per day. The facility is located approximately 200 feet south of the intersection of Fourth Street and Spruce Avenue in the City of Cushing in Nacogdoches County, Texas.

CITY OF MONTGOMERY has applied for a major amendment to TPDES Permit No. WQ0014737001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 200,000 gallons per day to a daily average flow not to exceed 400,000 gallons per day. The facility will be located southwest of the intersection of Farm-to-Market Road 2854 and Farm-to-Market Road 105, approximately 1,100 feet west of Farm-to-Market Road 2854 and 600 feet south of Farm-to-Market Road 105 in Montgomery County, Texas.

CONOCOPHILLIPS COMPANY which operates the Sweeny Refinery and Petrochemical Complex and the San Bernard Terminal, has applied for a major amendment to TPDES Permit No. WQ0000721000 to authorize the discharge of storm water via new Outfall 012; and removal of the 24-hour biomonitoring testing at Outfall 005. The current permit authorizes the discharge of storm water on an intermittent and flow variable basis via Outfalls 002, 003, 006, 009, and 010; boiler blowdown and storm water on an intermittent and flow variable basis via Outfall 005; and treated process wastewater, domestic wastewater, utility wastewater, demineralizer wastes, and storm water at a daily average flow not to exceed 7,400,000 gallons per day via Outfall 011. The facility is located at the refinery and petrochemical complex approximately 3.5 miles northwest of the City of Sweeny and southwest of the



intersection of State Highway 35 and Farm-to-Market Road 524; the San Bernard Terminal is located on an extension of Avenue A approximately 1.5 miles northeast of the City of Sweeny, Brazoria County, Texas.

ELOY KELSO has applied for a major amendment. Consideration of the application by Eloy Kelso for a major amendment of State Permit No. WQ0003149000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy facility from 300 head to a maximum capacity of 990 head, of which 990 head are milking cows, and increasing land application acreage from 236 acres to 338 acres. The facility is located on the east side of County Road 241 approximately 1 mile north of the intersection of County Road 241 and County Road 385. This intersection is located approximately 1.5 miles northwest of the intersection of County Road 385 and County Road 351. The intersection of County Road 385 and County Road 351 is located 2 miles west of the intersection of County Road 351 and US Highway 377 in Erath County, Texas.

FEDERATED METALS CORPORATION which owns an idled facility that used to cast and fabricate lead products from smelted raw materials and store non-ferrous metal products, has applied for a renewal of TPDES Permit No. WQ0003251000, which authorizes the discharge of stormwater on an intermittent and variable basis via Outfall 001 at a daily maximum flow not to exceed 324,000 gallons per day. The facility is located at 9200 Market Street approximately one-half mile south of the intersection of Interstate Highway 10 and Interstate Highway 610, within the City of Houston, Harris County, Texas.

HARRIS COUNTY has applied for a renewal of TPDES Permit No. WQ0012213001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 12303 Sonnier Street, inside the Alexander Deussen Park, approximately 1/3 of the way up from the south boundary, in the approximate middle of the park, south of Lake Houston in Harris County, Texas.

HUFFMAN INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011518001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located in the southeast corner of the Willie J. Hargrave Senior High School site, approximately 0.5 mile west of the intersection of Huffman - Eastgate Road and Farm-to-Market Road 1960 in Harris County, Texas.

INVISTA S.A.R.L which operates a chemicals and plastics manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0000476000 to authorize a reduction in the monitoring frequencies for total cyanide and amenable cyanide at internal Outfall 151 to once per year and once per week, respectively; removal of narrative effluent limitations at internal Outfalls 101, 201, 301, 401, 501, 601, 701, 801, 901, 111, 121, 141, and 151; removal of Outfalls 004, 131, 161, and 181; the additional discharges of non-contact cooling water from the cooling basin via Outfall 003; and authorization to discharge authorized non-storm water discharges (fire water, deluge water, and freeze protection water), steam condensate, and hydrostatic test water via Outfalls 002, 003, 005, and 006. The current permit authorizes the discharge of industrial cooling water, utility wastewaters, water treatment regenerant streams, previously monitored effluents (process wastewater, domestic wastewater, treated groundwater, and storm water) at a daily average flow not to exceed 21,800,000 gallons per day via Outfall 001; excess storm water overflow on an intermittent and flow variable basis via Outfall 002; excess storm water overflow and cooling water from the cooling water basin pumped during threat of hurricane on an intermittent and flow variable basis via Outfall 003; and storm water on an intermittent and flow variable basis via Outfalls 004, 005, and 006. The facility is located one mile west of the inter-

section of Farm-to-Market Road 1686 and Farm-to-Market Road 404, approximately 8 miles south of the City of Victoria, Victoria County, Texas.

LAND TEJAS PARK LAKES 1023, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014812001 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility will be located on the east bank of Williams Gully, about 6,000 feet north of the intersection of Beltway 8 and Lockwood Road in Harris County, Texas.

LOWER NECHES VALLEY AUTHORITY P.O. Box 5117, Beaumont, Texas 77726, has applied for a renewal of TPDES Permit No. WQ0014525001, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 96,000 gallons per day. The facility is located along the south side of Devillier Road from Drainage Ditch VIII-H east of Winnie Canal (0.85 mile west of Farm-to-Market Road 1406) northwest of Winnie in Chambers County, Texas.

LUMINANT GENERATION COMPANY LLC which operates the Comanche Peak Nuclear Power Plant, an electric generating station, has applied for a renewal of TPDES Permit No. WQ0001854000, which authorizes the discharge of once-through cooling and auxiliary cooling water and previously monitored effluents at a daily average flow not to exceed 3,168,000,000 gallons per day via Outfall 001; water from the Safe Shutdown Impoundment (containing cooling water, low volume wastes (service water), and storm water runoff) on an intermittent and flow variable basis via Outfall 002; treated sanitary sewage effluent on flow variable basis via Outfall 003; low volume wastewater and previously monitored effluents on an intermittent and flow variable basis via Outfall 004; and waters contained in Squaw Creek Reservoir on an intermittent and flow variable basis via Outfall 005. The facility is located at 6322 North Farm-to-Market Road 56, on the west side of Squaw Creek Reservoir along State Highway 56, approximately four and one half (4.5) miles northwest of the City of Glen Rose, Somervell County, Texas.

NORTH SHORE UTILITIES INC a private developer, has applied for a new permit, Proposed Permit No. WQ0014847001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via surface irrigation of 72 acres of non-public access land which consists primarily of native trees. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1 mile south of the western intersection of Reed Park Road and Farm-to-Market Road 1431, and approximately 0.5 miles south of the intersection of Breeze Way and Reed Park Road in Travis County, Texas.

PORT OF HOUSTON AUTHORITY has applied for a renewal of TPDES Permit No. WQ0013203001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located at 16800 Peninsula Boulevard in Harris County, Texas.

RESTAURANT SERVICES LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014860001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day. This facility was previously permitted as TCEQ Permit No. WQ0013983001 which expired on March 1, 2007. The facility is located at 16150 U.S. Highway 290 in the City of Jersey Village, Harris County, Texas.

RIVER PLANTATION MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010978001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of a 135 acre golf course. The facility is located approximately 1.5 miles downstream from the Interstate Highway 45 bridge, on the north bank of the West Fork San Jacinto River in Montgomery County, Texas.

SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0014100001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 905,000 gallons per day. The facility is located 0.5 mile southwest of the intersection of State Highway 6 and McKeever Road, 1.1 miles east of the intersection of Thompson Ferry and Hagerson Roads in northeast Fort Bend County, Texas.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010236001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located immediately north of Mooney Road and east of Halls Bayou in Harris County, Texas.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011231001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 1,600 feet south-southwest of the intersection of the intersection of Farm-to-Market Road 249 and Veterans Memorial Drive on the west side of Harris County Flood Control District Ditch in Harris County, Texas.

TEEN MANIA MINISTRIES INC has applied for a renewal of TPDES Permit No. WQ0013790001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1,150 feet west and 1,300 feet north of the intersection of Farm-to-Market Road 1253 and State Highway 16 in Smith County, Texas.

THE U.S. DEPARTMENT OF JUSTICE has applied for a major amendment to TCEQ Permit No. WQ0013461001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.30 million gallons per day in addition to the current irrigation authorization. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.30 million gallons per day on 82 acres of landscaping adjacent to the facility. The wastewater treatment facilities and disposal area are located on Federal Correctional Institute Three Rivers land approximately 2,000 feet south of State Highway 72 and 8 miles west of the Town of Three Rivers in Live Oak County, Texas in the drainage basin of Choke Canyon Reservoir in Segment No. 2116 of the Nueces River Basin.

VAM USA which operates a pipe and coupling threading and coating facility, has applied for a renewal of TPDES Permit No. WQ0003420000, which authorizes the discharge of process wastewater and domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfalls 002 and 003. The facility is located approximately 0.5 mile east of the intersection of Hardy Road and Richey Road, approximately two miles south of Farm-to-Market Road 1960, Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801587

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2008



## Notice of Water Rights Applications

Notices issued March 14 through March 21, 2008.

APPLICATION NO. 14-1348B; The City of San Angelo, applicant, 72 West College Avenue, San Angelo, Texas 76903, has applied for an amendment to Certificate of Adjudication No. 14-1348 to add a downstream diversion point on the Concho River, Colorado River Basin, in Tom Green County. More information on the application and how to participate in the permitting process is given below. The application and a portion of the required fees were received on July 25, 2007. Additional information and fees were received on October 29, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on November 28, 2007. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by April 4, 2008.

APPLICATION NO. 12267; Granite Construction Company, applicant, 3802 19th Street, Lubbock, TX 79410, has applied for a Temporary Water Use Permit to divert and use not to exceed 10 acre-feet of water, within a period of one year, from Yellow House Draw, Brazos River Basin for industrial purposes in Lubbock County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on November 2, 2007, and additional information and fees were received on February 15, 2008. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 28, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by April 9, 2008.

APPLICATION NO. 5219A; Luminant Mining Company LLC, applicant, 1601 Bryan Street, Dallas, Texas 75201-3411, has applied for an amendment to Water Use Permit No. 5219 to increase the storage capacity for the authorized reservoir (Pond B-81) located on Hogan Creek, Sabine River Basin; to change the diversion point from the perimeter of Pond B-81 to a diversion segment located on Hogan Creek; to add an existing reservoir (Pond CII-20) on Alder Creek, Sabine River Basin; and to divert and use not to exceed a total amount of 254 acre-feet of water per year from the Martin Lake Lignite Mining Area for industrial purposes in Panola County, Texas. More information on the application and how to participate in the permitting process is given below. The application was received on July 18, 2007. Additional information and fees were received on August 29 and October 12, 2007, and January 2, 2008. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 7, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12244; Terry Jackson Inc., applicant, P.O. Box 1082, Dripping Springs, Texas 78620, has applied for a Water Use Permit to divert and use not to exceed 1.5 acre-feet of water per year for mining purposes from the James River, Colorado River Basin in Mason County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 9, 2007, and additional information was received

on November 5 and December 20, 2007. The application was declared administratively complete and filed with the Office of the Chief Clerk on January 7, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801589

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2008



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 12, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Gregg Dentler & Hugh Doug Dentler dba Dentlers Tire Shop; SOAH Docket No. 582-08-0859; TCEQ Docket No. 2005-1052-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Gregg Dentler & Hugh Doug Dentler dba Dentlers Tire Shop on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written

public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200801591

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2008



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 12, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Armaan Enterprises, Inc., dba Stop N to Go; SOAH Docket No. 582-08-1241; TCEQ Docket No. 2004-0507-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Armaan Enterprises, Inc., dba Stop N to Go on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200801592

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2008



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 12, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Twin Lakes Enterprises, Inc., dba Houston Discount Cleaners and dba 1.25 Dry Clean Center; SOAH Docket No. 582-08-1217; TCEQ Docket No. 2006-1163-DCL-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Twin Lakes Enterprises, Inc., dba Houston Discount Cleaners and dba 1.25 Dry Clean Center on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200801593

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2008

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**Proposal for Decision**

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 20, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Bruce's, Inc.; SOAH Docket No. 582-08-0036; TCEQ Docket No. 2007-0119-WQ-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Bruce's, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200801594

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2008

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**Texas Ethics Commission**

**List of Late Filers**

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

**Deadline: Semiannual Report due July 16, 2007**

Carl Garrison, The Fort Bend County Democratic Party (CEC), P.O. Box 2189, Missouri City, Texas 77459-2189

**Deadline: Lobby Activities Report due January 10, 2008**

Claire Phelps Arenson, 1122 Colorado St., Ste. 208, Austin, Texas 78701

Ben Campbell, 4424 Gaines Ranch Loop #415, Austin, Texas 78735

Mark R. Clark, 1600 State St., 3rd Fl., Houston, Texas 77007

Danielle Delgadillo, 1001 Congress Ave., Ste. 200, Austin, Texas 78701

Hector M. Garcia Delgado, 816 Camaron St., Ste. 214, San Antonio, Texas 78212

Deece Eckstein, 1010 Winsted Lane, Austin, Texas 78703

Anthony Haley, 919 Congress Ave., Ste. 1130, Austin, Texas 78701

Loren D. Herr, 323 Congress Ave., Ste. 100, Austin, Texas 78701

Michael Kelly, 4806 Timberline Dr., Austin, Texas 78746

S. Jay Maguire II, 737 6th St. SE, #2, Washington, DC 20003

Glen Maxey, P.O. Box 2505, Austin, Texas 78768

Linda J. Nichols, P.O. Box 26460, Austin, Texas 78755

Jack C. Ogg, 3215 Mercer St. #100, Houston, Texas 77027

Martin Pena, 213 Mesquite, Laguna Vista, Texas 78578

Steven C. Ray, P.O. Box 1377, Austin, Texas 78767

Tony Reinhart, 1201 NW Briarcliff Pkwy, Ste. 315, Kansas City, Missouri 64116

Sue Walden, 55 Waugh Dr., Ste. 515, Houston, Texas 77007

Jim Warren, 710 W. 30th St., Austin, Texas 78705-2206

**Deadline: Semiannual Report due January 15, 2008**

Marsha G. Newberry, Democratic Grassroots Coalition, 1636 Blackstone Dr., Carrollton, Texas 75007-5121

**Deadline: 30-Day Pre-Election Report due February 4, 2008**

David M. Davenport, 19222 Sarah Ann Ct., Humble, Texas 77346

Guadalupe A. Gonzalez, 2111 Dorado Dr., Mission, Texas 78573

Daniel J. Ramos, 159 Shoreview Pl., San Antonio, Texas 78242

James D. Schull, 8507 Hwy. 377 S., Ste. F, Benbrook, Texas 76126

James C. Shaw, Texas Alliance for Life, P.O. Box 202252, Austin, Texas 78720

TRD-200801563

David Reisman

Executive Director

Texas Ethics Commission

Filed: March 24, 2008

◆ ◆ ◆  
**Texas Facilities Commission**

**Request for Proposals #303-8-11394**

The Texas Facilities Commission (TFC), on behalf of the Department of State Health Services (DSHS), announces the issuance of Request for Proposals (RFP) #303-8-11394. TFC seeks a five (5) year lease of approximately 2,736 square feet of office/clinic space in Rockport, Aransas County, Texas.

The deadline for questions is April 11, 2008 and the deadline for proposals is April 22, 2008 at 3:00 p.m. The award date is May 21, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=75750](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=75750).

TRD-200801568

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 25, 2008

◆ ◆ ◆  
**Texas Health and Human Services Commission**

**Correction to Public Notice**

The Texas Health and Human Services Commission (HHSC) published a public notice regarding its intent to submit Transmittal Number 08-000, Amendment Number 804, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act in the February 1, 2008, issue of the *Texas Register* (33 TexReg 1001). The notice listed

an incorrect Transmittal Number, Amendment Number and fiscal impact. As well, the notice erroneously stated the Service Responsibility Option (SRO) would be added as an option for consumer self-direction. SRO is not independent of Consumer Directed Services (CDS) and therefore should not be listed separately in the State Plan. The correct notice should be as follows:

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 08-006, Amendment Number 810, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective February 1, 2008.

The proposed amendment will add Support Consultation as a State Plan service and will adopt a rate methodology for Support Consultation. Support Consultation is a State Plan service that provides practical skills training and assistance to individuals, thus enabling them to successfully self-direct their PHC services. Support Consultation is only available to individuals who use Consumer Directed Services (CDS) to manage their PHC services. The amendment also deletes an outdated reference to the Texas Department of Human Services (DHS.)

The proposed amendment to add Support Consultation as a State Plan service will have no fiscal impact.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Sarah Hambrick, Senior Rate Analyst, by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1431; by facsimile at (512) 491-1998; or by e-mail at [sarah.hambrick@hhsc.state.tx.us](mailto:sarah.hambrick@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200801575

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 25, 2008



#### Notice of Adopted Reimbursement Rate for Large, State-Operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

**Adopted Rates.** As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted the following per diem reimbursement rates for large, state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR).

**Per Diem Rates for Large, State-Operated ICF/MR Services:**

**Large State-Operated ICF/MR Facilities-Medicaid Only clients**

Proposed interim daily rate: \$381.26

**Large State-Operated ICF/MR Facilities - Dual-eligible Medicaid/Medicare clients**

Proposed interim daily rate: \$365.09

HHSC conducted a public hearing on January 14, 2008, to receive public comment on the proposed rates. The hearing was held in accordance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC. The proposed rates and public hearing notice were published in the December 21, 2007, issue

of the *Texas Register* (32 TexReg 9847). The adopted rates are to be effective September 1, 2007.

**Methodology and Justification.** The adopted rates were determined in accordance with the rate setting methodologies codified at TAC Title 1 Chapter 355, Subchapter D, §355.456(e), relating to Reimbursement Determination for State-Operated Facilities. The rate changes are being made based on actual and projected increases in costs to operate these facilities.

TRD-200801558

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 24, 2008



#### Notice of Hearing on Proposed Provider Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on April 22, 2008, at 9:00 a.m. to receive public comment on proposed payment rates for Supported Employment and Employment Assistance Services in the Deaf-Blind with Multiple Disabilities (DBMD) Program waiver. The Department of Aging and Disability Services (DADS) operates this waiver program.

The public hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed reimbursement rates. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes to adopt rates for the services listed above. The proposed rates will be effective May 1, 2008, and were determined in accordance with the rate setting methodologies listed below under Methodology and Justification.

**Methodology and Justification.** The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, and Subchapter M, Division 2, §355.9022(c). Supported Employment and Employment Assistance Services are new services that will be available to DBMD consumers effective May 1, 2008, and require rates before DADS can implement these services.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on April 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at [Kimbra.Rawlings@hhsc.state.tx.us](mailto:Kimbra.Rawlings@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to [Kimbra.Rawlings@hhsc.state.tx.us](mailto:Kimbra.Rawlings@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400,

Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200801570

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 25, 2008



## Public Notice

The Texas Health and Human Services Commission announces its intent to submit the following to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act:

\* Amendment 811, Transmittal Number TX 08-007

\* Amendment 812, Transmittal Number TX 08-008

\* Amendment 813, Transmittal Number TX 08-009

\* Amendment 814, Transmittal Number TX 08-010

\* Amendment 815, Transmittal Number TX 08-011

The purpose of these amendments is to ensure that the State is in compliance with the Interim Final Rule on Optional State Plan Case Management Services (CMS-2237-IFC), published in the December 4, 2007, Federal Register (72 FR 68077) for the Centers for Medicare and Medicaid Services as well as other related federal guidance on case management. The amendments will modify the current Texas Medicaid State Plans for:

\* Mental Retardation Case Management

\* Early Childhood Development Targeted Case Management

\* Mental Health Targeted Case Management

\* Case Management for Children and Pregnant Women

\* Case Management for Children Who Are Blind or Visually Impaired

The proposed amendments are effective March 3, 2008.

The proposed amendments will have no fiscal impact to the state or the federal budgets.

Interested parties may obtain copies of the proposed amendments by contacting Christina Dyer, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1747; by facsimile at (512) 491-1998; or by e-mail at christina.dyer@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200801584

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 26, 2008



## Texas Department of Housing and Community Affairs

Announcement of the Opening of the Public Comment Period for the Draft 2008 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2007

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of a 15-day public comment period for the *State of Texas Draft 2008 Consolidated Plan Annual Performance Report - Reporting on Program Year 2007* (the Report) as required by the US Department of Housing and Urban Development (HUD). The Report is required as part of the overall requirements governing the State's consolidated planning process. The Report is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins April 7, 2008, and continues until 5:00 p.m. on April 21, 2008.

The Report gives the public an opportunity to evaluate the performance of the past program year for four HUD programs: the Community Development Block Grant Program administered by the Office of Rural Community Affairs, the Emergency Shelter Grants and HOME Investment Partnerships programs administered by the Department, and the Housing Opportunities for Persons with AIDS Program administered by the Texas Department of State Health Services. The following information is provided for each of the four programs covered in the Report: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

Beginning April 7, 2008, the Report will be available on the Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). A hard copy can be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, TX 78711-3941 or by calling (512) 475-3976.

Written comment should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, TX 78711-3941, by email to [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us), or by fax to (512) 469-9606.

TRD-200801571

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 25, 2008



## Panhandle Regional Planning Commission

### Request for Proposals

The Panhandle Regional Planning Commission (PRPC) is soliciting proposals from qualified entities to organize and operate an integrated one-stop service delivery system to deliver workforce development and child care program services in the 26 counties of the Texas Panhandle Workforce Development Area under a single contract.

Services provided through the One-Stop service delivery system will include but may not be limited to those funded and governed by the Workforce Investment Act, TANF/CHOICES, Food Stamp Employment and Training, Project RIO, Wagner-Peyser Employment Services and Child Care and Development Fund grants.

Proposers will be expected to demonstrate the capability to conduct workforce service delivery for all customer groups at the current level and also effectively incorporate the Board's stated priorities.

The initial term for any award resulting from this solicitation will be October 1, 2008 through September 30, 2009, with the possibility for renewal for up to three additional years.

The proposal schedule is expected to be as follows:

Release Request for Proposals (RFP) April 1, 2008

Proposers Conference April 17, 2008, 1:30 p.m.

Deadline for Questions April 23, 2008

Deadline for Submission May 21, 2008, 3:00 p.m.

Prospective proposers may request a copy of the RFP by sending the contact and organization names, and mailing and email addresses to Tony White, Assistant Director, Workforce Development, at [twhite@theprpc.org](mailto:twhite@theprpc.org). The RFP may also be obtained in person at PRPC, 415 West Eighth Avenue, Amarillo, Texas 79101 between 8:00 a.m. to 5:00 p.m., Monday through Friday.

TRD-200801557

Tony White

Assistant Director, Workforce Development

Panhandle Regional Planning Commission

Filed: March 24, 2008



## Public Utility Commission of Texas

### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 19, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Momentum Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35480 before the Public Utility Commission of Texas.

Applicant intends to provide interconnection, switching and interexchange services on a wholesale basis.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 9, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35480.

TRD-200801573

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 25, 2008



### Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on March 19, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' request for a one thousand-block of numbers on behalf of its customer, Hill College, in the Cleburne rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 35479.

The Application: Southwestern Bell Telephone Company submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because Southwestern Bell Telephone Company d/b/a AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 9, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35479.

TRD-200801572

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 25, 2008



### Notice of Petition for Proposed Merger and Acquisition of Stock

Notice is given to the public of a petition for proposed merger and acquisition of stock filed with the Public Utility Commission of Texas on March 14, 2008, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, §§14.101 and 39.262, and 39.915 (Vernon 2007 & Supp. 2007) (PURA).

Docket Style and Number: Petition of PNM Resources, Inc. and Cap Rock Energy Corporation Regarding Proposed Merger and Acquisition of Stock, Docket Number 35460.

The Petition: PNM Resources, Inc. (PNM Resources) and Cap Rock Energy Corporation (Cap Rock Energy) (collectively, Applicants) filed the above styled and numbered petition. Applicants stated that PNM Resources and its subsidiary, PNM Merger Sub, LLC (PNM Sub) entered into an agreement with Continental Energy Systems, LLC (Continental Energy) and Cap Rock Holding Corporation (Cap Rock Holding) in which PNM Sub will merge with and into Cap Rock Holding, with Cap Rock Holding to be the surviving entity. The outstanding shares of Cap Rock Holding will be converted to cash and the outstanding equity interests in PNM Sub will be converted into outstanding shares of capital stock of Cap Rock Holding, with the result that Cap Rock Holding will become a wholly-owned subsidiary of PNM Resources at the effective time of consummation of the merger transaction. Cap Rock Holding will continue to maintain control of 100% of the outstanding common stock of Cap Rock Energy.

Applicants stated that PNM Resources will pay \$202.5 million in cash to the shareholders of Cap Rock Holding, subject to adjustments for the changes in certain components of working capital and for debt at close. A copy of the Agreement and Plan of Merger pertaining to this transaction is included in the petition. Following the transaction close, Cap Rock Holding and Cap Rock Energy will be affiliated with a service company that provides administrative and corporate support services to all companies in the PNM Resources corporate system. Additionally, Applicants stated that the closing of this proposed transaction is conditioned upon the closing of a separate transaction between the Public Service Company of New Mexico (PNM) and Continental Energy wherein New Mexico Gas Company, Inc., a subsidiary of Continental Energy, will be acquiring the assets related to PNM's New Mexico natural gas business (the NM Gas Transaction); thus, Applicants seek approval of the petition following the NM Gas Transaction and when all other regulatory approvals are obtained.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 35460.

TRD-200801518  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 19, 2008

## Stephen F. Austin State University

### Notice of Consultant Contract Renewal

In compliance with the provisions of Texas Government Code, Chapter 2254, Subchapter B, Stephen F. Austin State University (SFASU) furnishes this notice of renewal of the University's contract with consultant Mark Lewis, 1431 Frostwood Dr., Tyler, Texas 75703. The original contract was in the sum of \$10,260 plus expenses. The contract was renewed beginning January 10, 2004 and continuing through September 30, 2007, with a total multiple year sum not to exceed \$50,000, plus expenses, in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11433). The contract is renewed to work in coordination with the University and the National Science Foundation to create and modify the evaluation design for the SFASU Math and Science Partnership "Texas Middle and Secondary Mathematics Project."

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

All inquiries should be directed to Dr. Kimberly Childs, P.O. Box 13040, SFA Station, Nacogdoches, TX 75962; Phone: (936) 468-3805; email [kchilds@sfasu.edu](mailto:kchilds@sfasu.edu).

TRD-200801532  
R. Yvette Clark  
General Counsel  
Stephen F. Austin State University  
Filed: March 20, 2008

## Texas Department of Transportation

### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

**[www.txdot.gov/about\\_us/public\\_hearings\\_and\\_meetings/aviation.htm](http://www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm)**

Or visit **[www.txdot.gov](http://www.txdot.gov)**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-200801578  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: March 25, 2008

### Public Notice of DEIS Extension of Public Comments (I-69/Trans-Texas Corridor)

Pursuant to Title 43, Texas Administrative Code, §2.5(e)(5), the Texas Department of Transportation (TxDOT) is advising the public of the **extension of public comments** for the Tier One Draft Environmental Impact Statement (DEIS) for the I-69/Trans-Texas Corridor (I-69/TTC) (the Northeast Texas to Mexico Element) project **from March 19, 2008 to April 18, 2008**. The project is being developed jointly with the Federal Highway Administration.

The Tier One DEIS is available for public review at TxDOT district and area offices, public libraries in the study area, and online at **[www.keeptexasmoving.com](http://www.keeptexasmoving.com)**. For a complete listing of locations to view the Tier One DEIS, visit the website or call toll-free at (866) 554-6989. Copies (paper or CD) can be obtained for the actual cost of reproduction and shipping. To order a copy, call toll-free at (866) 554-6989, or send a request via the web on the project comments page at **[www.keeptexasmoving.com](http://www.keeptexasmoving.com)**.

The TxDOT offices at which you may review the Tier One DEIS include:

#### Graphic TxDOT District Offices

TxDOT conducted a series of public hearings between February 4 - March 4, 2008 on the I-69/TTC Tier One DEIS. The purpose of the public hearings was to present the I-69/TTC Tier One DEIS and Recommended Preferred Alternative to the public and to receive public comment.

Written comments from the public regarding the Tier One DEIS may be submitted through the project website (**[www.keeptexasmoving.com](http://www.keeptexasmoving.com)**) or mailed to: Mr. Ed Pensock Jr., P.E., Texas Department of Transportation, P.O. Box 14428, Austin, Texas 78761. **To be included in the official record of the I-69/TTC Tier One DEIS, all comments must be submitted or postmarked by Wednesday, April 18, 2008.**

Usted puede obtener información en Español y las llamadas son gratis: (866) 554-6989.

TRD-200801577  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: March 25, 2008

## University of Houston System

### Consultant Contract Award Notice

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston System furnishes this notice of consultant contract award. The consultant will provide advice and consultation in the areas of Enrollment Services. Requests for proposals were filed in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1182).

The contract was awarded to Evans Consulting Group, Inc., 7853 Eagle Ranch Road, Fort Collins, CO 80528, for a amount of \$200,000.00.



The beginning date of the contract is April 1, 2008 and the ending date is March 31, 2009.

For further information, please call (832) 832-4603.

TRD-200801520

Brian S. Nelson

Associate General Counsel/Executive Director

University of Houston System

Filed: March 19, 2008



## **The University of Texas System**

### **Invitation for Consultants to Provide Offers of Consulting Services**

The University of Texas System Administration (the "University") is currently using the services of Mercer Human Resource Consulting, Inc. (Mercer) to provide competitive market data on total compensation for executive officers of The University of Texas System.

Pursuant to *Texas Government Code* §2254.29, the University intends to amend the current contract to allow for additional supplemental and related services not anticipated in the original contract with Mercer. The University may request that Mercer modify the peer groups it established in its original executive compensation survey for further refined analysis.

The Chancellor of The University of Texas System has made a finding that the Consulting Services are necessary. While the University has a substantial need for the Consulting Services, the University does not currently have staff with expertise or experience with the Consulting Services and the University cannot obtain such Consulting Services through a contract with another state governmental entity.

Unless the University receives a better offer, the University intends to amend the contract for the consulting services with Mercer, a consul-

tant that previously provided consulting services to the University, to provide supplemental executive compensation analysis.

The award for services will be based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal, preference will be given to a consultant whose principal place of business is in the State of Texas or who will manage the consulting contract wholly from an office in the state.

The individual to be contacted with an offer to provide such consulting services is:

Mr. Art Martinez

Executive Director for Board Services

The University of Texas System

201 West Seventh Street

Suite 820

Austin, Texas 78701

Voice: (512) 499-4402

Email: [amartinez@utsystem.edu](mailto:amartinez@utsystem.edu)

The proposal submission deadline will be April 11, 2008 at 4:00 p.m. Central Standard Time.

TRD-200801559

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: March 24, 2008



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).